



**OFFICE OF THE ATTORNEY
GENERAL**

TAXATION DIVISION

**COMPTROLLER OF PUBLIC ACCOUNTS
CASE LIST AND SUMMARY OF ISSUES**

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Franchise Tax

3 Beall Brothers 3, Inc. v. Rylander, et al. Cause #GN002755

AG Case #001354026

Franchise Tax; Refund

Filed: 09/15/00

Period: 1993

Amount: \$265,995

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Issue: Whether the franchise tax was applied retroactively to deny Plaintiff a business loss carry forward. Whether the officer and director compensation add-back is unconstitutional.

Status: Answer filed.

AirBorn, Inc. v. Rylander, et al. Cause #99-08165

AG Case #99-1189192

Franchise Tax; Refund

Filed: 07/15/99

Period: 1992-1995

Amount: \$109,612.26

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Issue: Whether the Comptroller incorrectly calculated apportioned gross receipts by applying the throw-back rule to receipts from states where Plaintiff was subject to tax. Whether application of the rule violates the commerce clause. Whether Plaintiff's right to do business was unconstitutionally taken by retroactively shortening its privilege period in the 1991 amendments to the franchise tax.

Status: Answer filed. See *Comptroller v. Fisher Controls* and *General Dynamics v. Sharp*.

American General Corp. v. Rylander, et al. Cause #GN003178

AG Case #001375419

Franchise Tax; Protest

Filed: 10/31/00

Period: 1994-1998

Amount: \$2,131,754.78

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Mark W. Eidman

Ray Langenberg

Eric Hagenswold

Scott, Douglass &

McConnico

Austin

Issue: Whether intercorporate receipts should be excluded from gross receipts. Whether certain obligations were debts. Whether the Comptroller's application of the debt deduction statute violates equal protection. Whether an indirect tax on post-retirement benefits violates ERISA and the supremacy doctrine. Whether interest should be waived. Whether the assessment violates equal taxation, equal protection, due process, commerce clause, the Tax Code, the Administrative Code, was in excess of statutory authority, was made through unlawful procedure, and was arbitrary and capricious.

Status: Answer filed.

Anderson-Clayton Bros. Funeral Home, Inc.; Restland of Dallas, Inc.; Restland Funeral Home; Singing Hills Funeral Homes, Inc.; Laurel Land Funeral Home of Fort Worth, Inc.; Blue Bonnet Hills Funeral Home, Inc.; and Blue Bonnet Hills Memorial Park, Inc. v. Rylander, et al. Cause #99-12183

AG Case #99-1227646

Franchise Tax; Refund

Filed: 10/18/99

Period: 1993-1996

Amount: \$407,212.91

\$107,861.97

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

Michael Rubenstein

Locke, Liddell & Sapp

Houston

Issue: Whether income earned on Plaintiff's trust accounts for prepaid funeral services gives rise to Texas gross receipts.

Status: Answer filed.

Bandag Licensing Corp. v. Sharp, et al. Cause #98-06931
#03-99-00427-CV
AG Case #98-985094

Franchise Tax; Protest
Filed: 06/29/98
Period: 1990-1993
Amount: \$274,831

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Gilbert J. Bernal, Jr.
James F. Martens
Stahl, Martens & Bernal
Austin

Issue: Whether Plaintiff has nexus with Texas for franchise tax purposes because it holds a certificate of authority.

Status: Judgment for plaintiff. Appeal in progress. Oral argument had on 02/02/00. Third Court of Appeals affirms in all respects. Petition for review filed. Court requested Response; filed 08/24/00. Court requested briefing on the merits. Petitioners' brief filed. Respondent's brief and Petitioners' reply briefs filed. Petition denied 01/11/01. Petitioners' motion for rehearing denied.

Beef Products, Inc. v. Rylander, et al. Cause #99-01193
AG Case #99-1112061

Franchise Tax; Protest
Filed: 02/01/99
Period: 1992 and 1993
Amount: \$331,040.60

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Tom Tourtellotte
Tourtellotte & Kennon
Austin

Issue: Whether the Comptroller properly applied the throw-back rule to apportion gross receipts under the pre-amended statute. Whether the throw-back rule violates the commerce clause. Whether the rule as applied is unconstitutionally retroactive and violates due process.

Status: Answer filed. See *Comptroller v. Fisher Controls International, Inc.*

Central Telephone Co. of Texas and United Telephone Co. of Texas v. Rylander, et al. Cause #GN100332
AG Case #011409646

Franchise Tax; Protest &
Refund

Filed: 02/01/01

Period: 1988-1994

Amount: \$300,772.95
\$204,616.25

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Issue: Whether inclusion of access charges in Texas' gross receipts violates Comptroller rules on franchise tax treatment of interstate telephone receipts. Whether inclusion of the charges violates equal protection.

Status: Answer filed.

Continental Tire North America, Inc. v. Rylander, et al. Cause #GN100506
AG Case #011416286

Franchise Tax; Refund

Filed: 02/15/01

Period: 1992-1995

Amount: \$250,000.00

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Mark W. Eidman
Ray Langenberg
Eric Hagenswold
Scott, Douglass &
McConnico
Austin

Issue: Whether post retirement benefits are debt for the franchise tax and whether ERISA preempts the inclusion of those benefits in the tax base.

Status: Answer filed.

Dana Corp. v. Sharp, et al. Cause #96-03598
AG Case #96-494234

Franchise Tax; Protest

Filed: 3/28/96

Period: 1988-1991

Amount: \$804,971

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

David E. Cowling
Sheryl S. Scovell
Jones, Day, Reavis & Pogue
Dallas

Issue: Whether certain reserve accounts, including post-retirement benefits, are debt for franchise tax purposes. Whether Tax Code §171.109 (j)(1) is preempted by ERISA.

Status: Answer filed.

Delco Electronics Corp. v. Sharp, et al. Cause #97-12045

AG Case #97-843052

Franchise Tax; Refund

Filed: 10/22/97

Period: 1992-1995

Amount: \$536,478

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Issue: Whether interest, rental and royalty income earned by Plaintiff should not be included in income because it was derived from discrete business enterprises that served an investment, rather than an operational function, and the activities producing the income were not part of the unitary business conducted by Plaintiff in Texas.

Status: Non-jury trial set for 06/11/01.

El Paso Electric Co. v. Sharp, et al. Cause #96-07178

AG Case #96-547384

Franchise Tax; Refund

Filed: 06/09/96

Period: 1988-1989

Amount: \$36,289

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

David H. Gilliland
Clark, Thomas & Winters
Austin

Issue: Whether unfunded pension liability is a debt that should be deducted from taxable surplus.

Status: All other issues settled 12/04/98. Discovery in progress.

Fisher Controls International, Inc. v. Sharp, et al. Cause #98-08893

#03-00-00183-CV

AG Case #98-1020621

Franchise Tax; Protest

Filed: 08/11/98

Period: 1992-1993

Amount: \$1,209,209

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Gilbert J. Bernal, Jr.
James F. Martens
Stahl, Martens & Bernal
Austin

Issue: Whether the phrase “is not subject to taxation” means the same thing in the earned surplus throw-back statute as it does in the taxable capital throw-back statute; whether the "throw-back" statute is constitutional; whether the Comptroller retroactively applied an amendment.

Status: Non-jury trial held 12/13/99. Judgment for Plaintiff 12/21/99 on the statutory construction issue. Constitutional issue was not reached. Notice of Appeal filed 03/20/00. Appellants’ and Appellee’s briefs filed. Argued before the Third Court of Appeals 10/18/00.

Fort James Operating Co., Inc. v. Rylander, et al. Cause #GN100498

AG Case #011417888

Franchise Tax; Refund Filed: 02/15/01 Period: 1991 Amount: \$55,009.00	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L.G. Skip Smith Clark, Thomas & Winters Austin
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Issue: Whether ERISA preempts the franchise tax so that post-retirement benefits must be excluded from the tax base.

Status: Answer filed.

General Motors Corp. v. Sharp, et al. Cause #97-12350

#03-00-00247-CV

AG Case #97-843800

Franchise Tax; Refund Filed: 10/31/97 Period: 1991-1994 Amount: \$18,788,858	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L.G. Skip Smith Clark, Thomas & Winters Austin
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Issue: Whether post-retirement benefits, if included in surplus by the Comptroller, violate the preemption provision of ERISA. Operating lease obligations--Whether amounts due under fixed term leases are excludable from surplus as debt.

Status: Plaintiff challenges the decision in *Sharp v. Caterpillar*, 932 S.W. 2d 230 (Tex. App. - Austin 1996, writ denied). Summary judgment granted for Comptroller 03/23/00. Third Court of Appeals reaffirmed *Caterpillar* in a 12/07/00 opinion that is not to be published. Plaintiff filed a petition for review 02/22/01. The Comptroller filed a waiver of response.

Gulf Publishing Co. v. Sharp, et al. Cause #98-04208

AG Case #98-942862

Franchise Tax; Refund

Filed: 04/22/98

Period: 1992-1995

Amount: \$218,713

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Ray Bonilla

Ray Wood Fine & Bonilla
Austin

Issue: Whether all of Gulf Publishing Company's magazine advertising revenue should be allocated to Texas receipts or should be allocated according to location of subscriber.

Status: Discovery in progress. Hearing on Motion for Summary Judgment set for 12/11/00. Hearing passed. Motion to be reset. Plaintiff's Motion for Summary Judgment granted.

H.J. Heinz Co., Inc. v. Sharp, et al. Cause #98-10929

AG Case #98-1052103

Franchise Tax; Protest

Filed: 09/28/98

Period: 1992-1995

Amount: \$534,056

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

L.G. Skip Smith

Clark, Thomas & Winters
Austin

Marilyn A. Wethekam

Horwood Marcus & Berk
Chicago

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Agreed motion to retain on suspense docket filed. See *Upjohn v. Comptroller, S.W. 3d* (Tex. App. Austin, pet. filed).

H.J. Heinz Co., Inc. v. Sharp, et al. Cause #98-12746
AG Case #98-1079312

Franchise Tax; Protest
Filed: 11/12/98
Period: 1992-1995
Amount: \$29,244

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§ 151.314(a), 171.104, and 171.103(1).

Status: Agreed motion to retain on suspense docket filed. See *Upjohn v. Comptroller, S.W. 3d* (Tex. App. Austin, pet. filed).

H.J. Heinz Co. v. Rylander, et al. Cause #99-05828
AG Case #99-1168451

Franchise Tax; Refund
Filed: 05/19/99
Period: 1994 & 1995
Amount: \$384,530 &
\$381,167

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether gross receipts for food shipped from out-of-state to Texas storage and distribution centers should be included in the franchise tax formula. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed. Should be resolved as for *Nabisco* and *Upjohn*.

Harcourt Brace Jovanovich Legal & Professional, HBJ Farm Publications, Psychological Corp., Drake Beam Morin, Inc. and Holt Rinehart & Winston, Inc. v. Sharp, et al. Cause #97-03795
AG Case #97-706290

Franchise Tax; Protest and Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 03/28/97	Plaintiff's Counsel:	Jess M. Irwin, III
Period: 1987-1990		Steven D. Moore
1989-1991		Jackson & Walker
1988-1991		Austin
Amount: \$243,469 (total of all)		

Issue: Whether intercompany payable account obligations should have been excluded from debt for purposes of calculating franchise tax. Attorneys fees.

Status: Inactive.

House of Lloyd, Inc. v. Sharp, et al. Cause #95-06985
AG Case #95-300365

Franchise Tax; Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 06/05/95		
Period: 1989-1991	Plaintiff's Counsel:	Fred O. Marcus
Amount: \$19,825		Horwood, Marcus & Braun
		Chicago
		David E. Cowling
		Jones, Day, Reavis & Pogue
		Dallas

Issue: Whether the Texas franchise tax is a tax imposed on or measured by net income for purposes of Public Law 86-272; if so, Plaintiff contends that it is not subject to the Texas franchise tax. Whether Plaintiff is doing business in Texas. Whether post-retirement benefits should be included in taxable surplus.

Status: Hearing on cross-motions for summary judgment postponed.

House of Lloyd, Inc. v. Sharp, et al. Cause #95-06986
AG Case #95-300338

Franchise Tax; Refund
Filed: 06/05/95
Period: 1992
Amount: \$106,136

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Fred O. Marcus
Horwood, Marcus & Braun
Chicago

David E. Cowling
Jones, Day, Reavis & Pogue
Austin

Issue: Whether the Texas franchise tax is a tax imposed on or measured by net income for purposes of Public Law 86-272; if so, Plaintiff contends that it is not subject to the Texas franchise tax. Whether Plaintiff is doing business in Texas. Whether post-retirement benefits should be included in taxable surplus.

Status: Hearing on cross-motions for summary judgment postponed.

James River II, Inc. v. Rylander, et al. Cause #GN100497
AG Case #011416278

Franchise Tax; Refund
Filed: 02/15/01
Period: Initial and 1990-
1991
Amount: \$71,159.00

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Issue: Whether ERISA preempts the franchise tax so that post-retirement benefits must be excluded from the tax base.

Status: Answer filed.

Jiffy Lube International, Inc. v. Rylander, et al. Cause #99-12043
AG Case #99-1226747

Franchise Tax; Refund
Filed: 10/13/99
Period: 1992
Amount: \$34,768.59

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

Gerard A. Desrochers
Baker Botts
Houston

Issue: Whether the Comptroller's assessment of additional franchise tax is untimely and void. Alternatively, whether Plaintiff's post retirement benefits should be considered wages under Section 171.109(j)(1), whether disparate treatment of contingent assets such as Plaintiff's net negative deferred income tax liability is unconstitutional, and whether a portion of the assessed interest should have been waived.

Status: Inactive.

Kerrville Telephone Co., The v. Rylander, et al. Cause #GN00058

AG Case #001258219

Franchise Tax; Protest &
Refund

Asst. AAG Assigned:

Blake Hawthorne

Filed: 01/05/00

Plaintiff's Counsel:

C. Morris Davis

Period: 1992-1995

McGinnis, Lochridge &

Amount: \$48,437.57

Kilgore

Austin

Issue: Whether receipts from access and billing charges to inter-exchange carriers and from subscriber line charges are Texas gross receipts. Whether the Comptroller failed to follow Rule 3.357 (e)(39), thereby denying due process to Plaintiff.

Status: Inactive.

Lyondell Chemical Worldwide, Inc., f/k/a Arco Chemical Co. v. Rylander, et al.

Cause #99-13283

AG Case #99-1238130

Franchise Tax; Protest &
Declaratory Judgment

Asst. AAG Assigned:

Christine Monzingo

Filed: 11/12/99

Plaintiff's Counsel:

Kim E. Brightwell

Period: 1999

Garry M. Miles

Amount: \$34,100,000

Wade Anderson

Vinson & Elkins

Austin

Issue: Whether Rule 3.557 is invalid because it required Plaintiff to apportion its gross receipts as a sale of all of its assets to a new parent corporation when the new parent purchased Plaintiff's stock in a transaction under I.R.C. §338. Whether requiring Plaintiff to treat the transaction as an actual sale violates equal protection, equal taxation and due process.

Status: Settled.

May Department Stores Co., The v. Sharp, et al. Cause #98-06899

AG Case #98-983559

Franchise Tax; Refund

Filed: 06/26/98

Period: 1991-1995

Amount: \$207,375

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Issue: Whether Plaintiff's officer and director compensation should be added to taxable surplus for franchise tax purposes.

Status: Agreed motion to retain on suspense docket pending *Palais Royal & 3 Beall Brothers 3, Inc. v. Comptroller*.

Mcorp v. Sharp, et al. Cause #93-11603

AG Case #93-354695

Franchise Tax; Refund

Filed: 09/28/93

Period: 1985 & 1986

Amount: \$489,667

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Cynthia M. Ohlenforst
Jill B. Scott
Hughes & Luce
Dallas & Austin

Issue: Whether Plaintiff may deduct from its surplus the pre-acquisition earnings of certain acquired subsidiaries.

Status: Answer filed. Inactive. Plaintiff in bankruptcy. Requesting dismissal.

Network Security Acceptance Corp., as Successor in Interest to Network Security Corp. v. Sharp, et al. Cause #95-15698

AG Case #96-437029

Franchise Tax; Protest

Filed: 12/21/95

Period: 1986-1987

Amount: \$355,619

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

David E. Cowling
Jones, Day, Reavis & Pogue
Dallas

Issue: Whether acquisition debt incurred by an acquiring corporation must be pushed down to the acquired corporation.

Status: Inactive.

North Star Steel Texas, Inc. v. Sharp, et al. Cause #98-12019

AG Case #98-1071152

Franchise Tax; Refund

Filed: 10/23/98

Period: 1992-1995

Amount: \$725,830

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

James F. Martens
Gilbert J. Bernal, Jr.
Stahl, Martens & Bernal
Austin

Issue: Whether Comptroller properly interpreted throw-back rule for purposes of gross receipts apportionment factor.

Status: Inactive pending *Comptroller v. Fisher Controls, Inc.*, which was argued 10/18/00 to the Third Court of Appeals.

Ore-Ida Foods, Inc. v. Sharp, et al. Cause #98-10928

AG Case #98-1052897

Franchise Tax; Protest

Filed: 09/28/98

Period: 1992-1995

Amount: \$744,167

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed. See *Upjohn v. Comptroller*, S.W. 3d (Tex. App. Austin 2000, pet. filed).

Ore-Ida Foods, Inc. v. Sharp, et al. Cause #98-12747
AG Case #98-1079320

Franchise Tax; Protest
Filed: 11/12/98
Period: 1992-1994
Amount: \$14,050

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§ 151.314(a), 171.104, and 171.103(1).

Status: Agreed Motion to Retain on suspense docket pending. See *Upjohn v. Comptroller, S.W. 3d (Tex. App. Austin 2000, pet. filed)*.

Ore-Ida Foods, Inc. v. Rylander, et al. Cause #99-05827
AG Case #99-1168535

Franchise Tax; Refund
Filed: 05/19/99
Period: 1994 & 1995
Amount: \$324,051 &
\$90,910

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed. Should be resolved as for *Upjohn*.

Palais Royal, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al. Cause #96-03719
AG Case #96-495867

Franchise Tax; Protest Filed: 04/01/96 Period: 1992-1993 (3 Beall) 1992-1995 (Palais) Amount: \$700,974	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether the 1991 Franchise Tax Statute is unconstitutionally retroactive as applied to the 1992 report year of a fiscal year taxpayer. Whether the officer-director add-back statute is unconstitutional under equal taxation provisions. Whether the implementation of the earned surplus tax component violated due process.

Status: Trial court granted Plaintiffs' motion for summary judgment on the due process, retroactivity, and equal tax issues, and granted the State's Motion for Summary Judgment on the officer-director compensation add-back issue. Judgment signed 01/29/01.

Peter Scalamandre & Sons, Inc., et al. v. Sharp, et al. Cause #95-01183
AG Case #95-220184

Franchise Tax; Protest Filed: 01/31/95 Period: 06/92-12/94 Amount: \$2,465	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Susan E. Potts Brown & Potts Dallas Mark Gibbons Olson, Gibbons, Sartain, Nicoud, Birne & Sussman Dallas
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Issue: Whether Plaintiff is exempt from franchise tax as a "corporation engaged solely in the business of recycling sludge" per §171.085 of the Tax Code.

Status: Inactive.

Pfizer, Inc. v. Rylander, et al. Cause #GN001781
AG Case #001323641

Franchise Tax; Protest
Filed: 06/20/00
Period: 1994-1996
Amount: \$309,078

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Mark W. Eidman
Scott, Douglass &
McConnico
Austin

Issue: Whether franchise tax is due on income from sale of stock in former non-unitary subsidiary corporation. Whether receipts from sales of drugs shipped from outside Texas should be included in Texas' earned surplus gross receipts. Whether the throw-back rule applies to Michigan sales. Whether tax on income earned before the effective date of the earned surplus component is unconstitutional. Whether all penalty and interest should be waived.

Status: Answer filed.

Portion Pac, Inc. v. Sharp, et al. Cause #98-10930
AG Case #98-1052129

Franchise Tax; Protest
Filed: 09/28/98
Period: 1992-1995
Amount: \$192,869

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: See *H.J. Heinz v. Comptroller, et al, supra*.

Portion Pac, Inc. v. Sharp, et al. Cause #98-12748
AG Case #98-1079510

Franchise Tax; Protest
Filed: 11/12/98
Period: 1992-1995
Amount: \$9,192

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: See *H.J. Heinz v. Comptroller, et al, supra*.

Portion Pac, Inc. v. Rylander, et al. Cause #99-05826
AG Case #99-1168600

Franchise Tax; Refund
Filed: 05/19/99
Period: 1994 & 1995
Amount: \$1,625 & \$13,750

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed. Should be resolved as for *Upjohn*.

Randall's Food & Drugs, Inc. v. Rylander, et al. Cause #GN003174

AG Case #001375450

Franchise Tax; Protest &
Refund

Filed: 10/31/00

Period: 1994-1997

Amount: \$4,006,942.39

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Jasper G. Taylor, III
Jay M. Chadha
Fulbright & Jaworski
Houston

Issue: Whether the Comptroller's Rule 3.555(g)(3), which denies a carry forward of business losses of a merged corporation by the surviving corporation, is an unconstitutional retroactive law or a violation of Texas and Delaware statutes on mergers. Whether compensation of officers and directors should have been added back to Plaintiff's income and whether doing so violates constitutional equal taxation requirements. Whether some receipts were incorrectly treated as Texas receipts Whether surplus calculation by the Comptroller should have excluded increases from push-down accounting. Whether failure to waive penalties and interest was arbitrary. Whether the audit has calculation errors. Whether the Comptroller's determination and decision violate equal protection, due process, and other constitutional provisions.

Status: Answer filed.

Reliant Energy Gas Transmission Co., f/k/a Noram Gas Transmission Co. v. Rylander, et al. Cause #99-08127

AG Case #99-1187675

Franchise Tax; Refund

Filed: 07/15/99

Period: 1996

Amount: \$163,758.10

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

L.G. Skip Smith
David H. Gilliland
Clark, Thomas & Winters
Austin

Issue: Whether a business loss carry-forward of a merged corporation may be used to reduce the surviving corporation's franchise tax.

Status: Answer filed.

Richland Development Corp. v. Rylander, et al. Cause #99-12042
AG Case #99-1227638

Franchise Tax; Refund Filed: 10/13/99 Period: 1992 Amount: \$236,218.26	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Gerard A. Desrochers Baker Botts Houston
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Issue: Whether the Comptroller's assessment of additional franchise tax is untimely and void. Alternatively, whether Plaintiff's post retirement benefits should be considered wages under Section 171.109 (j)(1), whether disparate treatment of contingent assets such as Plaintiff's net negative deferred income tax liability is unconstitutional, and whether a portion of the assessed interest should have been waived.

Status: Answer filed.

Richland Development Corp. v. Comptroller, et al. Cause #96-09117
AG Case #96-573461

Franchise Tax; Protest and Declaratory Judgment Filed: 08/01/96 Period: 1989-1991 Amount: \$1,031,003	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Gerard A. Desrochers Baker Botts Houston
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Issue: Whether reimbursements to a subsidiary for services procured by the sub for the parent from third parties should be included in gross receipts. Whether post-retirement benefits should be deducted from surplus.

Status: First amended petition filed. Discovery in progress.

Saudi Refining, Inc. v. Rylander, et al. Cause #99-04227
AG Case #99-1155755

Franchise Tax; Refund & Protest Filed: 04/09/99 Period: 1994-1995 Amount: \$502,834.84 & \$190,000.58	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Ira A. Lipstet Therese L. Surprenant Jenkins & Gilchrist Austin
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Issue: Whether Plaintiff may take franchise tax credit as a joint venture partner for equipment sales taxes paid by the joint venture.

Status: Preparing discovery.

Schlumberger Technology Corp. v. Rylander, et al. Cause #GN002484

AG Case #001348614

Franchise Tax; Refund &
Declaratory Judgment

Filed: 08/23/00

Period: 1991

Amount: \$35,537

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Gerard A. Desrochers

Baker Botts

Houston

Issue: Whether Plaintiff's wage reserve accounts are debt for purposes of the franchise tax. Whether §171.109 is unconstitutional on its face and as applied on grounds of equal protection, equal taxation and due process. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Sergeant Enterprises, Inc. v. Sharp, et al. Cause #96-15475

AG Case #97-652613

Franchise Tax; Refund

Filed: 12/31/96

Period: 1995

Amount: \$42,968

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

Mark W. Eidman

Ray Langenberg

Scott, Douglass &

McConnico

Austin

Issue: Whether a business loss carry-forward can be transferred to another corporation by way of merger and whether Rule 3.555 prohibiting such a transfer is applicable to audit periods before the effective date of the rule.

Status: Discovery in progress.

Shaklee Corp. d/b/a Shaklee U.S., Inc. v. Sharp, et al. Cause #96-06767

AG Case #96-537466

Franchise Tax; Refund

Filed: 6/10/96

Period: 1992-1993

Amount: \$10,261

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

David E. Cowling

Charlotte Noel

Jones, Day, Reavis & Pogue

Dallas

Issue: Whether Plaintiff's officer and director compensation should be added to taxable surplus for franchise tax purposes.

Status: Inactive.

Southern Union Co. v. Sharp, et al. Cause #95-00677

AG Case #95-214930

Franchise Tax; Refund

Filed: 01/18/95

Period: 1988-1990

Amount: \$573,449

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Mark W. Eidman

Scott, Douglass &

McConnico

Austin

Issue: Whether a company may retroactively change from 30 to 20 year service lives and from 15% to zero salvage value in computing depreciation.

Status: Settled.

Southern Union Co. v. Sharp, et al. Cause #97-01622

AG Case #97-678873

Franchise Tax; Protest

Filed: 02/11/97

Period: 1991-1993

Amount: \$217,183

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Mark W. Eidman

Scott, Douglass &

McConnico

Austin

Issue: Whether Plaintiff should be allowed to depreciate its “distribution plant assets” over a less than thirty-year life with zero salvage value. Whether post-retirement benefits are a “debt.” If included in surplus, is preemption provision of ERISA violated.

Status: Settled.

Southern Union Co. v. Rylander, et al. Cause #GN003692

AG Case #011399409

Franchise Tax; Refund

Filed: 12/29/00

Period: 1994

Amount: \$549,983

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Mark W. Eidman
Ray Langenberg
Eric Hagenswold
Scott, Douglass &
McConnico
Austin

Issue: Whether Plaintiff was required to use historical cost as the basis of assets of an acquired corporation. Whether post-retirement benefit obligations are debt. Whether disallowing deduction of post-retirement benefits violates equal protection. Whether Plaintiff may use another method to account for depreciation.

Status: Partial settlement.

Southern Pacific Transportation Co. and St. Louis Southwestern Railway Co. v. Sharp Cause #96-11071

AG Case #96-600128

Franchise Tax; Protest

Filed: 09/13/96

Period: 1990-1993

Amount: \$779,952

(Southern Pacific)

\$171,733 (St. Louis)

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Issue: Whether push-down accounting may be used.

Status: Discovery in progress. Summary judgment set for 12/14/00. Agreed order of dismissal granted 02/07/01.

Specialty Retailers, Inc. v. Rylander, et al. Cause #GN100415

AG Case #011410529

Franchise Tax; Refund

Filed: 02/08/01

Period: 1992-1996

Amount: \$34,167

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Issue: Whether Plaintiff is entitled to a refund for a business loss carryforward.

Status: Answer filed.

Specialty Retailers, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al. Cause #98-01348

AG Case #98-893255

Franchise Tax; Refund

Filed: 02/06/98

Period: 1993

Amount: \$250,488

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Issue: Whether the 1993 franchise tax on earned surplus is a retroactive tax as applied to fiscal year taxpayers.

Status: Bankruptcy stay in effect. See *General Dynamics v. Sharp* and *3 Beall Brothers 3, Inc. v. Comptroller, et al.*

Star-Kist Foods, Inc. v. Sharp, et al. Cause #98-10931

AG Case #98-1052145

Franchise Tax; Protest
Filed: 09/28/98
Period: 1992-1995
Amount: \$311,235

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: See *H.J. Heinz v. Comptroller, et al, supra*.

Star-Kist Foods, Inc. v. Sharp, et al. Cause #98-12749
AG Case #98-1080369

Franchise Tax; Protest
Filed: 11/12/98
Period: 1992-1995
Amount: \$18,789

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: See *H.J. Heinz v. Comptroller, et al, supra*.

Star-Kist Foods, Inc. v. Rylander, et al. Cause #99-05825

AG Case #99-1168634

Franchise Tax; Refund

Filed: 05/19/99

Period: 1994

Amount: \$689

Asst. AAG Assigned:

Plaintiff's Counsel:

Cecilia Gonzalez

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed. Should be resolved as for *Upjohn*.

Tesoro Petroleum Corp. v. Sharp, et al. Cause #95-05170-A

AG Case #95-277159

Franchise Tax; Refund

Filed: 04/27/95

Period: 1982-1986, & 1987

Amount: \$805,943

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

Mark W. Eidman
Scott, Douglass &
McConnico
Austin

Issue: Whether post-retirement medical benefits should be excluded from surplus for franchise tax purposes. Whether the statute of limitations has run on the 1982-1986 reports.

Status: Post-retirement issue severed and docketed as Cause No. 95-05170-A. Awaiting final disposition of *General Motors*. Remaining issues settled.

Texaco Refining & Marketing (East), Inc. v. Rylander, et al. Cause #99-14555
AG Case #99-1249228

Franchise Tax; Refund	Asst. AAG Assigned:	Christopher Jackson
Filed: 12/15/99		
Period: 1994	Plaintiff's Counsel:	David H. Gilliland
Amount: \$1,028,616.15		L.G. (Skip) Smith
		Clark, Thomas & Winters
		Austin

Issue: Whether Plaintiff is entitled to a franchise tax credit for sales tax on manufacturing equipment purchased by a joint venture that it co-owned.

Status: Answer filed.

Texas Aromatics, Inc. v. Sharp, et al. Cause #94-07680
AG Case #94-103018

Franchise Tax; Protest and	Asst. AAG Assigned:	Christopher Jackson
Declaratory Judgment		
Filed: 06/23/94	Plaintiff's Counsel:	Mark W. Eidman
Period: 02/01/90-12/31/91		Ray Langenberg
Amount: \$146,092		Scott, Douglass &
		McConnico
		Austin

Issue: Plaintiff challenges franchise "additional" tax imposed after Plaintiff merged out of existence, on the grounds that the tax discriminates without a rational basis between fiscal and calendar-year taxpayers, under state and federal equal taxation provisions, and violated the federal commerce clause nexus and fair relation tests.

Status: Preparing motion for summary judgment.

Union Pacific Resources Co. v. Sharp, et al. Cause #95-02334
AG Case #95-234473

Franchise Tax; Refund	Asst. AAG Assigned:	Steve Rodriguez
Filed: 02/24/95		
Period: 1988-1991	Plaintiff's Counsel:	Mark W. Eidman
Amount: \$1,432,851		Ray Langenberg
		Scott, Douglass &
		McConnico
		Austin

Issue: Whether various liabilities should be deducted from surplus as debt, including post-retirement benefits, long-term lease obligations, long-term contractual commitments, and liabilities from ongoing litigation. Also, whether the Tax Code is preempted by ERISA.

Status: Answer filed. Pending outcome of *General Motors*.

Universal Frozen Foods Co., its Successors-in-Interest, Conagra, Inc. and Lamb Weston, Inc., and Universal Foods Corp. v. Sharp, et al. Cause #98-01956
AG Case #98-901683

Franchise Tax; Protest Filed: 02/23/98 Period: 01/01/98-07/31/94 Amount: \$613,229	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Ira Lipstet Mary E. Haught Jenkins & Gilchrist Austin
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Issue: Whether the "Additional Tax" in §171.0011 is illegal income tax because franchise tax can be imposed only on the privilege of doing business in Texas. Whether the Additional Tax violates other constitutional provisions. Whether a gain on the sale of one Plaintiff's stock from its parent to another company was improperly included in taxable earned surplus for the purpose of calculating the Additional Tax. Whether Rule 3.557(e)(10) is beyond the scope of §171.110 and therefore exceeds the Comptroller's authority. Whether Rule 3.557 is unconstitutional.

Status: Cross-motions for summary judgment set for hearing on 04/30/01.

Upjohn Co., The v. Sharp, et al. Cause #98-03809
#03-00-00055-CV
AG Case #98-932917

Franchise Tax; Protest Filed: 04/10/98 Period: 1991-1994 Amount: \$1,391,740	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Ira A. Lipstet Jenkins & Gilchrist Austin
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Issue: Whether the exclusion from Texas receipts of receipts from the sale of health care supplies found in §171.104 is restricted to the calculation of taxable capital or whether it extends to the calculation of tax on earned surplus.

Status: Judgment for Defendants on 12/29/99. Court of Appeals affirmed trial court's judgment. Petition for review filed 12/04/00. Response filed 02/21/01.

U.S. Home Corp. v. Rylander, et al. Cause #GN003082

AG Case #001372424

Franchise Tax; Refund

Filed: 10/20/00

Period: 1992 and 1993

Amount: \$46,607.88

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

D. Steven Henry
Gregory A. Harwell
Robert M. Reed, Jr.
Gardere & Wynne
Dallas

Issue: Whether Plaintiff is entitled to write down or write off the value of its investment in bankrupt subsidiaries.

Status: Answer filed.

Weight Watchers Food Co. v. Sharp, et al. Cause #98-10927

AG Case #98-1052137

Franchise Tax; Protest

Filed: 09/28/98

Period: 1992-1995

Amount: \$122,677

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: See *H.J. Heinz v. Comptroller, et al, supra*.

Weight Watchers Gourmet Food Co. v. Rylander, et al. Cause #99-05829
AG Case #99-1168527

Franchise Tax; Refund	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 05/19/99		
Period: 1994	Plaintiff's Counsel:	L.G. Skip Smith
Amount: \$62,417		Clark, Thomas & Winters Austin
		Marilyn A. Wethekam Horwood Marcus & Berk Chicago

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether gross receipts for food shipped from out-of-state to Texas storage and distribution centers should be included in the franchise tax formula. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed. Should be resolved as for *Upjohn*.

***Westcott Communications, Inc., Law Enforcement Television Network, Inc.,
Westcott ECI, Inc. and TI-IN Acquisition Corp. v. Sharp, et al.*** Cause #98-14049
AG Case #99-1093113

Franchise Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 12/17/98		
Period: 01/01/92-12/31/94	Plaintiff's Counsel:	Mark W. Eidman
Amount: \$1,182,242.67		Ray Langenberg Steve Wingard Scott, Douglass & McConnico Austin

Issue: Whether apportionment of satellite service gross receipts to Texas violates the commerce, due process or equal protection clauses of the Constitution or the Tax Code and Comptroller rules apportioning receipts to the state where a service is performed. Alternatively, whether interest should be waived.

Status: Inactive.

Wheelabrator Corp., The and Swindell Dressler Leasing Co. v. Sharp, et al.

Cause #98-00942

AG Case #98-891532

Franchise Tax; Protest

Filed: 01/23/98

Period: 1990-1993

Amount: \$38,482

\$473,678

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

Gilbert J. Bernal, Jr.

James F. Martens

Stahl, Martens & Bernal

Austin

Issue: Whether intercompany payable account obligations should have been excluded from debt for purposes of calculating franchise tax.

Status: Discovery in progress. Deposition of plaintiff taken 01/25/01. Deposition of defendants scheduled for 03/22-23/01. Trial set for 06/11/01.

Xerox Credit Corp. v. Rylander, et al. Cause #99-06232

AG Case #99-1172602

Franchise Tax; Protest

Filed: 05/28/99

Period: 1992-1999

Amount: \$2,290,821.39

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

James F. Martens

Gilbert J. Bernal, Jr.

Stahl, Martens & Bernal

Austin

Issue: Whether transfers of accounts receivables were sales or pledges for federal income and franchise tax apportionment purposes. Whether non-Texas capital gains were improperly offset by capital losses inconsistently with apportionment provisions of the franchise tax. Whether taxpayer had constitutional nexus with Texas. Whether taxpayer was denied equal protection. Whether interest and penalty should be waived. Taxpayer also seeks declaratory judgment and attorneys' fees.

Status: Non-jury trial set for 12/10/01.

Sales Tax

Abbassinezhad, Akbar v. Rylander, et al. Cause #99-03696

AG Case #99-1152422

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 03/29/99	Plaintiff's Counsel:	Max J. Luther, III
Period: 01/01/93-09/30/96		Max J. Luther, III, P.C. & Associates
Amount: \$50,061.22		Corpus Christi

Issue: Whether the amounts subjected to sales tax in audit were taxable receipts or loan monies. Also, asserting individual liability against Comptroller and Attorney General.

Status: Answer filed.

Alexopolous, Dimitrios P. v. Rylander, et al. Cause #99-08096

AG Case #99-1187865

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 07/14/99	Plaintiff's Counsel:	Stephen W. Sather
Period: 07/01/88-03/31/95		Naman, Howell, Smith & Lee
Amount: \$134,455.65		Austin

Issue: Issue is whether the Comptroller incorrectly calculated Plaintiff's gross taxable sales by using too low a factor for Plaintiff's personal consumption, improperly comparing Plaintiff's operations to other fast-food outlets, failing to consider that higher subsequent sales were due to population increases, determining that Plaintiff kept inadequate records when Plaintiff had lost them in a fire, and failing to consider the results of an IRS audit. Whether penalty and interest should be waived.

Status: Discovery in progress. Trial set 04/16/01.

Alpine Industries, Inc. v. Sharp, et al. Cause #98-12998

AG Case #98-1080526

Sales Tax; Protest

Filed: 11/20/98

Period: 1994-1998

Amount: \$31,128.62

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Stephen D. Good
Gregory A. Harwell
Gardere & Wynne
Dallas

Issue: Whether Alpine may be regarded as a seller for direct sales made in Texas by independent dealers and whether holding Alpine liable for sales tax violates the commerce clause, due process or equal protection.

Status: Discovery in progress.

American Oil Change Corp. v. Rylander, et al. Cause #99-06374

AG Case #99-1175084

Sales Tax; Protest

Filed: 06/03/99

Period: 1992-1993

Amount: \$467,142.31

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

Gerard A. Desrochers
Baker Botts
Houston

Issue: Whether materials are provided by Plaintiff to its customers in the course of its motor vehicle repairs under lump sum contracts, requiring Plaintiff to pay tax on the cost of materials. If Plaintiff's contracts are lump sum, whether Plaintiff is entitled to credit for tax collected from its customers and remitted to the Comptroller. Whether software services are taxable when the seller of the services contributes rather than sells the software itself. Whether software services are exempt under §151.346 as sales between affiliated entities of previously exempt services. Whether interest should have been waived. Whether any of the above issues result in a denial of equal protection, equal and uniform taxation or due process under the federal and state constitutions.

Status: Answer filed.

American Standard, Inc. v. Sharp, et al. Cause #92-14483
AG Case #92-165918

Sales Tax; Refund Filed: 10/13/92 Period: 01/01/90-12/31/90 Amount: \$17,486	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Judy M. Cunningham Attorney at Law Austin
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Issue: Whether conveyor belts are exempt machinery and equipment; unequal taxation; long-standing policy.

Status: Settlement discussions in progress.

American Telephone & Telegraph Co. v. Sharp, et al. Cause #98-06401
AG Case #98-980491

Sales Tax; Protest Filed: 06/15/98 Period: 01/01/84-12/31/89 Amount: \$8,024,506	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Jasper G. Taylor, III Fulbright & Jaworski Houston
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Issue: Whether the Comptroller's Office met its burden of proof with respect to the items assessed tax in Exams 9, 10, 12, 13, and 17. Whether Plaintiff's private line services are taxable telecommunications services and, if so, whether they were not subject to tax before 04/01/88.

Status: Answer filed.

Aramis Services, Inc. v. Sharp, et al. Cause #98-03527
AG Case #98-930349

Sales Tax; Protest Filed: 04/03/98 Period: 04/01/90-03/31/94 Amount: \$291,196	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Settlement discussions in progress.

Aramis Services, Inc. v. Rylander, et al. Cause #0000384
AG Case #001273051

Sales Tax; Protest Filed: 02/11/00 Period: 04/01/94-12/31/97 Amount: \$281,676.36	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson David E. Cowling Robert Lochridge Jones, Day, Reavis & Pogue Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed. Whether Rule 3.346(b)(3)(A) is invalid and whether the Comptroller has authority to change its long-standing policy. Alternatively, whether penalty should be waived.

Status: Settlement discussions in progress.

Baldry, Ann d/b/a Annie's Housekeeping Services v. Sharp, et al. Cause #95-02389
AG Case #95-234990

Sales Tax; Declaratory Judgment Filed: 2/27/95 Period: 04/01/88-06/30/92 Amount: \$63,588	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Alvin L. Thomas, II Littler, Mendleson & Fastiff Houston
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Issue: Whether sales tax is due on maid services provided by maids placed by Plaintiff's service but acting as independent contractors. Also, whether Plaintiff relied, to her detriment, on advice from the Comptroller's Office.

Status: Discovery in progress.

Bell Bottom Foundation Co. v. Rylander, et al. Cause #99-01092
AG Case #99-1112186

Sales Tax; Protest Filed: 01/29/99 Period: 01/01/91-12/31/94 Amount: \$81,571.73	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Timothy M. Trickey The Trickey Law Firm Austin
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Issue: Whether taxpayer's sub-contract was a separated contract since the general contractor's construction contract was separated.

Status: Answer filed.

BHC Co. v. Sharp, et al. Cause #95-13037

AG Case #95-386479

Sales Tax; Protest

Filed: 10/13/95

Period: 05/01/90-04/30/94

Amount: \$114,532

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Richard Flint

Pearson & Price

Corpus Christi

Issue: Plaintiff contends that it is providing a single, integrated service, the management and operation of a manufacturing facility, which service is not taxable. Plaintiff contests the Comptroller's assessment of tax on maintenance charges, which Plaintiff considers to be one component of an "integrated non-taxable service."

Status: Discovery in progress.

B.I. Moyle Associates, Inc. v. Rylander, et al. Cause #99-00907

AG Case #99-1108499

Sales Tax; Protest

Filed: 01/26/99

Period: 04/01/91-03/31/95

Amount: \$51,711.94

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

G. Stewart Whitehead

Winstead, Sechrest &

Minick

Austin

Issue: Whether taxpayer has substantial nexus with Texas to support imposition of sales and use taxes on its software licensed to Texas residents.

Status: Preparing motion for summary judgment.

Big Tex Air Conditioning, Inc. v. Bullock, et al. Cause #486,321
AG Case #90-322672

Sales Tax; Protest Filed: 6/26/90 Period: 04/01/85-07/31/88 Amount: \$181,397	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez John W. Berkel Houston
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Issue: Detrimental reliance and various allegations of unconstitutional enforcement; statute of limitations.

Status: Some discovery done. Inactive.

Border Steel Rolling Mills, Inc. and Border Steel, Inc., as Successor in Interest to Border Steel Rollings Mills, Inc. v. Rylander, et al. Cause #GN002671
AG Case #001352137

Sales Tax; Refund Filed: 09/08/00 Period: 06/01/91-08/31/95 Amount: \$76,281.34	Asst. AAG Assigned: Plaintiff's Counsel:	Scott Simmons Ray Bonilla Ray, Wood, Fine & Bonilla Austin
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Issue: Whether Plaintiff's rail-mounted cranes, related repair parts and labor are exempt from sales and use tax as rolling stock. Whether the Comptroller fully implemented an administrative agreement on taxation of other equipment and parts qualifying for the manufacturing exemption.

Status: Discovery in progress.

Brighton Builders, Inc. v. Sharp, et al. Cause #97-11830
AG Case #97-837489

Sales Tax; Protest Filed: 10/15/97 Period: 10/01/92-09/30/95 Amount: \$195,368	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Ray Langenberg Scott Douglass & McConnico Austin
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Issue: Whether certain real property services, such as landscaping and construction site cleanup, are taxable.

Status: Discovery near completion. Settlement discussions in progress.

Broadcast Satellite International, Inc. v. Rylander, et al. Cause #GN002895
AG Case #001365014

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 10/02/00	Plaintiff's Counsel:	William E. Bailey
Period: 01/01/91-12/31/97		Dallas
Amount: \$250,840.25		

Issue: Whether Plaintiff's broadcast services are non-taxable information services under §151.0038(a). Whether Plaintiff's services are not taxable telecommunications services under §151.0103(l) or data processing under §151.0035. Whether the sale or use of Plaintiff's services occurred out-of-state. Whether Plaintiff's experts demonstrated that Plaintiff is exempt under federal law. Plaintiff also asserts limitations as to part of the liability and seeks declaratory and injunctive relief.

Status: Temporary injunction hearing held 11/29/00. Temporary injunction denied 02/08/01.

C & T Stone Co. v. Rylander, et al. Cause #GN002428
AG Case #001344233

Sales Tax; Protest	Asst. AAG Assigned:	Steve Rodriguez
Filed: 08/18/00		
Period: 04/01/94-12/31/97	Plaintiff's Counsel:	William T. Peckham
Amount: \$207,454.40		Austin

Issue: Whether Plaintiff owes sales tax on its sales of limestone to third parties under §151.311(a). Whether Plaintiff detrimentally relied on advice from the Comptroller's Office. Whether exemption certificates covered some sales that were assessed tax. Whether Plaintiff is entitled to the manufacturing exemption under §151.318(g). Whether penalty and interest should be waived.

Status: Answer filed.

Cafeteria Operators, L.P. v. Rylander, et al. Cause #99-14363
AG Case #99-1243411

Sales Tax; Refund	Asst. AAG Assigned:	Blake Hawthorne
Filed: 12/09/99		
Period: 04/01/91-10/31/94	Plaintiff's Counsel:	Mark W. Eidman
Amount: \$117,868.69		Ray Langenberg
		Scott, Douglass & McConnico
		Austin

Issue: Whether Plaintiff's use of gas and electricity is exempt as processing. Whether Plaintiff's food products are prepared or stored for immediate consumption, thus eliminating the exemption. Whether taxation of Plaintiff's purchases of gas and electricity violates equal protection and lacks a rational basis.

Status: Discovery in progress. Plaintiff's motion for summary judgment filed. Summary judgment hearing set 04/05/01.

Central Power & Light Co. v. Sharp, et al. Cause #96-11455
AG Case #96-602037

Sales Tax; Refund	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 09/20/96		
Period: 07/01/86-12/31/89	Plaintiff's Counsel:	L.G. Skip Smith
Amount: \$32,788		Clark, Thomas & Winters Austin

Issue: Whether utility pole replacement services are non-taxable maintenance or taxable repair labor.

Status: Discovery in progress.

Choi, Sung Ju d/b/a Sam Young Trading Co. v. Sharp Cause #95-14940
AG Case #95-424767

Sales Tax; Injunction	Asst. AAG Assigned:	Steve Rodriguez
Filed: 11/30/95		
Period: 01/01/88-12/31/91	Plaintiff's Counsel:	Kenneth Thomas
Amount: \$54,068		Attorney at Law Dallas

Issue: Whether certain resale certificates should have been accepted by the Comptroller during the audit. Whether an injunction to suspend all collection activity should be granted.

Status: Discovery in progress.

Church & Dwight Co., Inc. v. Rylander, et al. Cause #GN000525

AG Case #001258201

Sales Tax; Refund

Filed: 01/12/00

Period: 10/01/90-12/31/93

Amount: \$64,868.50

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Robert C. Alden
Phillip L. Sampson, Jr.
Bracewell & Patterson
Austin

Issue: Whether Plaintiff owes use tax on promotional materials shipped from out-of-state. Whether the Comptroller's imposition of use tax is invalid because Plaintiff made no use of the materials in Texas. Whether Rule 3.346(b)(3)(A) is invalid. Whether the tax violates the Commerce and Due Process Clauses of the United States Constitution.

Status: Answer filed.

Clinique Services, Inc. v. Sharp, et al. Cause #98-03533

AG Case #98-930330

Sales Tax; Protest

Filed: 04/03/98

Period: 04/01/90-03/31/94

Amount: \$519,192

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

David E. Cowling
Jones, Day, Reavis & Pogue
Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Settlement discussions in progress.

Clinique Services, Inc. v. Rylander, et al. Cause #GN000376

AG Case #001273069

Sales Tax; Protest

Filed: 02/11/00

Period: 04/01/94-03/31/98

Amount: \$650,361.82

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

David E. Cowling
Robert Lochridge
Jones, Day, Reavis & Pogue
Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed. Whether Rule 3.346(b)(3)(A) is invalid and whether the Comptroller has authority to change its long-standing policy. Alternatively, whether penalty should be waived.

Status: Settlement discussions in progress.

Coastal Refining & Marketing, Inc. v. Sharp, et al. Cause #98-03540
AG Case #98-930321

Sales Tax; Protest Filed: 04/03/98 Period: 01/01/89-06/30/89 07/01/89-12/31/91 Amount: \$1,635,965	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Jasper G. Taylor, III Fulbright & Jaworski Houston Joe W. Cox Coastal States Management Corp. Houston
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Issue: Whether certain work performed by Plaintiff is new construction under a lump sum contract and thus not taxable.

Status: Discovery in progress.

Commercial Janitorial Services, Inc. v. Sharp, et al. Cause #95-03259
AG Case #95-249001

Sales Tax; Declaratory Judgment and Injunction Filed: 3/17/95 Period: 10/89 - 06/93 Amount: \$115,160	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Samuel Judy M. Cunninghamning McDaniel Attorney at Law Austin Sam Passman Passman & Jones Dallas
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Issue: Whether fraud penalty should have been assessed. Whether the Comptroller should be enjoined from collecting the tax while this suit is pending.

Status: Discovery in progress.

D&D Recycling, Inc. v. Rylander, et al. Cause #GN002278

AG Case #001339886

Sales Tax; Declaratory
Judgment

Filed: 08/09/00

Period: 1993-1996

Amount: \$38,141.72

Asst. AAG Assigned:

Scott Simmons

Plaintiff's Counsel:

Curtis J. Osterloh
Scott, Douglass &
McConnico
Austin

Issue: Whether Plaintiff's sort line (conveyor belt) is exempt manufacturing equipment. Plaintiff also seeks attorneys' fees.

Status: Settlement discussion in progress.

Denmon's H2 Safety Services, Inc. v. Sharp Cause #98-10165

AG Case #98-1047269

Sales Tax; Refund

Filed: 09/09/98

Period: 07/01/92-01/31/96

Amount: \$67,366

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

Judy M. Cunningham
Attorney at Law
Austin

Issue: Whether tax is due on a charge for training employees and providing safety supervisors in hydrogen sulfide safety at well sites, where Plaintiff also rented equipment.

Status: Discovery in progress.

E. de la Garza, Inc. v. Rylander, et al. Cause #GN003589

AG Case #0011395316

Sales Tax; Protest

Filed: 12/15/00

Period: 01/01/93-12/31/96

Amount: \$83,138.14

Asst. AAG Assigned:

Scott Simmons

Plaintiff's Counsel:

Rudy de la Garza
Brownsville

Issue: Whether sales of grocery bags and sacks are not taxable when sold to grocery stores who have provided a blanket sale for resale certificate. Plaintiff also complains of audit calculation errors.

Status: Discovery in progress.

East Rio Hondo Water Supply Corp. v. Rylander, et al. Cause #GN002807

AG Case #001357623

Sales Tax; Refund

Filed: 09/22/00

Period: 07/01/94-12/31/94

Amount: \$13,691.00

Asst. AAG Assigned:

Plaintiff's Counsel:

Nicole Galwardi

Timothy M. Trickey
The Trickey Law Firm
Austin

Issue: Whether Plaintiff is entitled to an exemption for electricity and equipment used to pressurize water for sale under the exemptions for equipment used in manufacturing and electricity used in processing.

Status: Mediation set 04/03/01.

El Paso Silverton Construction Co., Inc. v. Sharp, et al. Cause #97-00547

AG Case #97-658485

Sales Tax; Refund

Filed: 01/15/97

Period: 01/01/92-06/30/93

Amount: \$6,762

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

Judy M. Cunningham
Attorney at Law
Austin

Issue: Whether §151.311 of the Tax Code, as it existed during the audit period, discriminated against the federal government because it did not exempt purchases of contractors improving federal property while it did exempt purchases by contractors improving state property.

Status: Settled.

Estee Lauder Services, Inc. v. Sharp, et al. Cause #98-03525

AG Case #98-930358

Sales Tax; Protest Filed: 04/03/98 Period: 01/01/89-09/30/92 Amount: \$472,225	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Settlement discussions in progress.

Estee Lauder Services, Inc. v. Sharp, et al. Cause #98-03524

AG Case #98-930367

Sales Tax; Protest Filed: 04/03/98 Period: 10/01/98-03/31/96 Amount: \$748,773	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Settlement discussions in progress.

F.C. Felhaber & Co., Inc. v. Sharp, et al. Cause #97-05061

AG Case #97-729042

Sales Tax; Declaratory Judgment Filed: 04/28/97 Period: Amount: \$0.00	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Louis S. Zimmerman Fulbright & Jaworski Austin
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Issue: Plaintiff's Texas Custom Broker's License was suspended 120 days. Whether Plaintiff must actually observe exported goods cross the border. Whether the Comptroller's investigation of Plaintiff in connection with Plaintiff's customs broker license was *ultra vires* because a non-employee was used. Whether Plaintiff's constitutional rights were violated.

Status: Answer filed. On hold, pending outcome of *Macias v. Sharp*.

F M Express Food Mart, Inc., and Fouad Hanna Mekdessi v. Rylander, et al.

Cause #GN002724

AG Case #001353960

Sales Tax; Injunction

Asst. AAG Assigned:

Blake Hawthorne

Filed: 09/15/00

Period: 12/01/90-11/30/97

Plaintiff's Counsel:

Percy L. "Wayne" Isgitt

Amount: \$

Houston

Issue: Whether Comptroller's "estimated audit" is invalid. Whether Plaintiffs are entitled to an injunction of collection and of cancellation of their sales tax permits. Whether Tax Code §§112.051, 112.052, 112.101 and 112.108 are unconstitutional violations of the open courts provision. Plaintiffs seek a re-audit and a refund of money paid under protest in excess of the re-audited amount.

Status: Discovery in progress.

Fiesta Texas Theme Park, Ltd. v. Sharp, et al. Cause #98-02407

AG Case #98-914152

Sales Tax; Refund

Asst. AAG Assigned:

Cecilia Gonzalez

Filed: 03/05/98

Period: 10/01/90-04/30/93

Plaintiff's Counsel:

Jasper G. Taylor, III

Amount: \$328,829

Fulbright & Jaworski
Houston

Issue: Whether prizes awarded by Plaintiff to successful contestants of coin-operated as well as non-coin operated games are purchased for resale. Whether sales tax constitutes double taxation on machines on which occupation tax is paid and on non-coin games, admission to which is taxed. Advertising and sewing services are not taxable.

Status: Discovery in progress. Plaintiff filed unopposed motion to retain and will consolidate case with pending administrative matters when they are concluded.

Galleria Limited v. Rylander, et al. Cause #GN002277

AG Case #001339944

Sales Tax; Refund &
Declaratory Judgment

Asst. AAG Assigned:

Christopher Jackson

Filed: 08/09/00

Period: 1993-1994

Plaintiff's Counsel:

Gerard A. Desrochers

Amount: \$349,084.33

Baker Botts
Houston

Issue: Whether correction of original construction defects is new construction or real property repair and remodeling. Whether Comptroller Rule 3.357 conflicts with legislative intent. Whether the Comptroller's application of the statute and rule violate due process and equal protection. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Garza, Lawrence v. Sharp, et al. Cause #98-07607

AG Case #98-1001886

Sales Tax; Protest

Asst. AAG Assigned:

Cecilia Gonzalez

Filed: 07/17/98

Period: 01/01/93-09/30/95

Plaintiff's Counsel:

Stephen P. Dillon
Lindeman & Dillon
Houston

Amount: \$83,910

Issue: Whether the Comptroller used the proper sampling procedure and whether Plaintiff was correctly notified of the procedure to be used.

Status: Discovery in progress. Trial set for 05/08/00. Passed by agreement.

Gateway Homes, Inc. v. Sharp, et al. Cause #98-14225

AG Case #99-1093188

Sales Tax; Protest

Asst. AAG Assigned:

Christopher Jackson

Filed: 12/22/98

Period: 01/01/91-09/30/95

Plaintiff's Counsel:

Mark W. Eidman
Ray Langenberg
Paige Arnette
Scott, Douglass &
McConnico
Austin

Amount: \$133,146.26

Issue: Whether various service activities such as landscaping, cleaning and waste removal are taxable real property services. Whether any tax due is owed by independent contractor service providers under a tax-included contract. Whether tax was assessed on non-taxable new construction. Whether the assessment violates equal protection and whether interest should be waived.

Status: Settlement discussions in progress.

GATX Terminals Corp. v. Sharp, et al. Cause #96-10815
AG Case #96-595679

Sales Tax; Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 09/06/96		
Period:	Plaintiff's Counsel:	Ray Langenberg
Amount: \$698,491		Scott, Douglass & McConnico Austin

Issue: Various real property issues, including: whether repainting operations were repair and remodeling or periodic maintenance; whether the statute of limitations ran on a refund claim, where the statute had run on the vendor; whether work on a metering system was remodeling or new construction; whether Plaintiff is entitled to a refund of city taxes paid to Houston.

Status: Discovery in progress. Trial rescheduled for 05/15/01.

GATX Terminals Corp. v. Sharp, et al. Cause #98-13414
AG Case #98-1085483

Sales Tax; Protest	Asst. AAG Assigned:	Jim Cloudt
Filed: 12/02/98		
Period: 09/01/92-06/30/96	Plaintiff's Counsel:	Mark W. Eidman
Amount: \$125,330.40		Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether certain activities are taxable real property repair and remodeling or non-taxable maintenance and, alternatively, whether penalty and interest should be waived.

Status: Trial rescheduled for 05/15/01.

Graybar Electric Co., Inc. v. Sharp, et al. Cause #97-01795
AG Case #97-682966

Sales Tax; Protest	Asst. AAG Assigned:	Scott Simmons
Filed: 02/13/97		
Period: 01/01/88-12/31/91	Plaintiff's Counsel:	Mark W. Eidman
Amount: \$107,667		Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether the sample audit resulted in a correct assessment.

Status: Settlement negotiations in progress.

Grocers Supply Co., Inc. v. Sharp, et al. Cause #97-07564

AG Case #97-773840

Sales Tax; Protest

Asst. AAG Assigned:

Jim Cloudt

Filed: 06/30/97

Period: 03/01/89-09/30/92

Plaintiff's Counsel:

Tom Tourtellotte
Tourtellotte & Kennon
Austin

Amount: \$32,765

Issue: Whether certain resale certificates were accepted in good faith. Whether certain pallets were tax exempt as packaging used in the manufacturing process.

Status: Discovery in progress. Settled.

Grocers Supply Co., Inc. v. Sharp, et al. Cause #97-13659

AG Case #97-864573

Sales Tax; Refund

Asst. AAG Assigned:

Jim Cloudt

Filed: 12/09/97

Period: 03/01/89-09/30/97

Plaintiff's Counsel:

Tom Tourtellotte
Tourtellotte & Kennon
Austin

Amount: \$18,508

Issue: Whether certain pallets were tax exempt as packaging used in the manufacturing process.

Status: Discovery in progress. Settled.

H.J. Wilson Co., Inc. v. Sharp, et al. Cause #98-11574

AG Case #98-1063332

Sales Tax; Protest

Asst. AAG Assigned:

Christopher Jackson

Filed: 10/13/98

Period: 07/01/90-12/31/93

Plaintiff's Counsel:

David E. Cowling
Jones, Day, Reavis & Pogue
Dallas

Amount: \$1,076,019

Issue: Whether the purchase of sales catalogs printed out-of-state and shipped to Plaintiff's customers in Texas (at no charge to the customer) incur sales tax.

Status: Answer filed. On hold. Plaintiff filed bankruptcy in Tennessee 03/25/99.

Heritage Numismatic Auctions, Inc. and Heritage Capital Corp. v. Rylander, et al.

Cause #99-06186

AG Case #99-1175282

Sales Tax; Refund

Filed: 05/27/99

Period: 1993-1995

10/92-03/96

Amount: \$41,549.31

\$80,179.86

Asst. AAG Assigned:

Scott Simmons

Plaintiff's Counsel:

Brett B. Flagg

Brett B. Flagg & Associates

Dallas

Issue: Whether inter-company transactions were taxable sale. Whether some audit items were not taxable data processing services. Whether data processing services were exempt inter-company transactions.

Status: Negotiations in progress.

Herndon Marine Products, Inc. v. Sharp, et al. Cause #91-14786

AG Case #91-164788

Sales Tax; Refund

Filed: 10/18/91

Period: 01/01/87 - 03/31/90

Amount: \$62,465

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

John D. Bell

Wood, Boykin & Wolter

Corpus Christi

Issue: Whether predominant use of electricity from Plaintiff's meter is exempt. Whether burden of proof in administrative hearing should be clear and convincing evidence or preponderance of the evidence.

Status: Special exceptions and answer filed.

Hines Interests Limited Partnership v. Rylander, et al. Cause #GN003245
AG Case #001381680

Sales Tax; Protest & Refund Filed: 11/08/00	Asst. AAG Assigned:	Christopher Jackson
Period: 07/01/92-02/28/94	Plaintiff's Counsel:	Gerard A. Desrochers Baker Botts Houston
Amount: \$129,677.60		

Issue: Whether correction of original construction defects is new construction or real property repair and remodeling. Whether Comptroller Rule 3.357 conflicts with legislative intent. Whether the Comptroller's application of the statute and rule violate due process and equal protection. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Holzem, Inc. v. Sharp, et al. Cause #96-01041
AG Case #96-457827

Sales Tax; Declaratory Judgment Filed: 01/26/96	Asst. AAG Assigned:	Jim Cloudt
Period: 07/01/88-03/31/92	Plaintiff's Counsel:	Leland C. De La Garza De La Garza & Clark Dallas
Amount: \$229,930		

Issue: Whether Plaintiff's activities during the audit period constituted new construction or taxable repair and remodeling. Whether Plaintiff must pre-pay the tax.

Status: Plaintiff's motion to be excused from pre-paying tax granted 07/23/96. Discovery in progress. Hearing on Defendants' plea to the jurisdiction denied. State has filed counterclaim.

House of Lloyd, Inc. v. Rylander, et al. Cause #GN000111
AG Case #001261478

Sales Tax; Protest & Refund Filed: 01/21/00	Asst. AAG Assigned:	Steve Rodriguez
Period: 06/01/92-12/31/96	Plaintiff's Counsel:	Marilyn A. Wethekam Horwood Marcus & Berk Chartered Chicago, Illinois
Amount: \$597,281.67		L.G. (Skip) Smith Clark, Thomas & Winters Austin

Issue: Whether Plaintiff owes use tax on direct sales items, hostess free goods and demonstrator kits. Whether Plaintiff owes tax for under-collection of local sales tax. Whether the Comptroller's sample was flawed because it failed to consider over-collections of tax. Whether penalty should be waived.

Status: Answer filed.

Impaco, Inc. v. Rylander, et al. Cause #GN001570
AG Case #001310879

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 05/31/00	Plaintiff's Counsel:	Mark Foster
Period: 07/01/88-03/31/94		Foster & Malish
Amount: \$345,124.47		Austin

Issue: Whether Plaintiff's sales of rebuilt engines are exempt as sales for resale. Whether 60-day provision barred consideration of resale certificates. Whether some of the assessment is barred by the statute of limitations. Whether the assessment should be reduced because of insolvency. Whether the tax assessment violates the commerce clause, due process, equal protection or equal taxation. Plaintiff seeks attorneys' fees.

Status: Discovery in progress. Case settled. Preparing agreed motion to dismiss.

Interpak Terminals, Inc. v. Sharp, et al. Cause #95-15213
AG Case #95-428718

Sales Tax; Protest	Asst. AAG Assigned:	Scott Simmons
Filed: 12/07/95		
Period: 04/01/89-06/19/95	Plaintiff's Counsel:	Paul Price
Amount: \$14,125		Tom Wheat
		Pearson & Price
		Corpus Christi

Issue: Whether Plaintiff is entitled to the exemption for wrapping and packaging materials it uses to package plastic pellets sent to it by the manufacturer of the pellets.

Status: Discovery in progress.

Jett Racing and Sales, Inc. v. Sharp, et al. Cause #96-04721
AG Case #96-511242

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 04/25/96	Plaintiff's Counsel:	Judy M. Cunningham
Period: 05/01/88-02/29/92		James D. Blume
Amount: \$105,491		Dallas

Issue: Whether the purchase of an airplane was exempt as a sale for resale.

Status: Discovery in progress.

John Hancock Mutual Life Insurance Co., The v. Rylander, et al. Cause #GN001612
AG Case #001316520

Sales Tax; Refund	Asst. AAG Assigned:	Blake Hawthorne
Filed: 06/05/00	Plaintiff's Counsel:	James D. Blume
Period: 01/01/94-12/31/98		Jennifer S. Stoddard
Amount: \$345,377.95		Blume & Stoddard
		Dallas

Issue: Whether an insurance company is exempt from sales taxes on its use of electricity on the grounds that Tex. Ins. Code Art. 4.11, Section 9 prohibits them.

Status: Answer filed.

Kroger Co., The v. Sharp, et al. Cause #98-05641
AG Case #98-964231

Sales Tax; Refund	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/28/98	Plaintiff's Counsel:	Mark W. Eidman
Period: 01/01/90-12/31/93		Ray Langenberg
Amount: \$314,704		Scott, Douglass & McConnico
		Austin

Issue: Whether the refuse from Plaintiff's meat and produce departments, floral shops, delicatessens, fast food restaurants, and bakeries qualifies as industrial solid waste under § 151.0048 and Rule 3.356, making its removal exempt from sales tax. Whether the labor to paint Plaintiff's dairy and warehouse facilities is tax exempt maintenance. Whether "pan glazing" is exempt as tangible personal property used or consumed during the manufacture of Kroger baked goods.

Status: Discovery in progress.

Kunz Construction Co., Inc. v. Sharp, et al. Cause #96-10758

AG Case #96-595651

Sales Tax; Protest	Asst. AAG Assigned:	Steve Rodriguez
Filed: 09/05/96		
Period: 01/01/89-12/31/92	Plaintiff's Counsel:	Judy M. Cunningham
Amount: \$5,915		Attorney at Law Austin

Issue: Whether a non-profit, public hospital owned by the federal government is exempt under §151.311 even if it is excluded from the definition of non-profit hospital in the Health and Safety Code.

Status: Settled.

L. D. Brinkman & Co., Inc. v. Sharp, et al. Cause #95-06286

AG Case #95-289583

Sales Tax; Protest	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/18/95		
Period: 07/01/90-02/28/94	Plaintiff's Counsel:	Charles L. Perry
Amount: \$226,413		Arter & Hadden Dallas

Issue: Plaintiff contends that inventory samples should not have been taxed because they were ultimately sold and tax was collected. Also, whether cardboard rolls and plastic wrapping are exempt under the manufacturing exemption.

Status: Summary judgment pending.

LabOne, Inc. v. Rylander, et al. Cause #GN002190
AG Case #001335645

Sales Tax; Protest & Declaratory Judgment Filed: 08/02/00 Period: 1991-1997 Amount: \$520,983.95	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt James F. Martens Kirk R. Lyda Stahl, Martens & Bernal Austin
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Issue: Whether Plaintiff has nexus in Texas for tax on performance of lab tests in Kansas. Whether Plaintiff's activities are taxable insurance services in Texas. Whether Plaintiff's services and sales of supplies are exempt by rule and statute. Whether tax on Plaintiff violates due process and equal taxation. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Answer filed.

Lake Charles Yamaha, Inc. v. Morales, et al. Cause #95-08672
AG Case #96-485324

Sales Tax; Declaratory Judgment Filed: 11/13/95 Period: 04/01/91-03/31/95 Amount: \$150,214	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Russell J. Stutes, Jr. Scofield, Gerard, Veron, Singletary & Pohorelsky Lake Charles, Louisiana
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Issue: Plaintiff asserts that it has no nexus with Texas and cannot be assessed sales tax, although it concedes that it delivers merchandise into Texas in its own trucks. Plaintiff asks for a declaratory judgment and damages/attorneys fees under 42 USC §§1983 and 1988.

Status: Will be dismissed or non-suited pursuant to Lake Charles Music suit.

Lake Charles Yamaha, Inc. v. Morales, et al. Cause #95-3802
AG Case #95-325883

Sales Tax; Declaratory Judgment Filed: 07/11/95 Period: 04/01/91-03/31/95 Amount: \$150,214	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Russell J. Stutes, Jr. Scofield, Gerard, Veron, Singletary & Pohorelsky Lake Charles, Louisiana
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Issue: Plaintiff asserts that it has no nexus with Texas and cannot be assessed sales tax, although it concedes that it delivers merchandise into Texas in its own trucks. Plaintiff asks for a declaratory judgment and damages/attorneys fees under 42 USC §§1983 and 1988.

Status: Will be dismissed or non-suited pursuant to Lake Charles Music suit.

Laredo Country Club, Inc., A Texas Corp. v. Sharp, et al. Cause #98-11834
AG Case #98-1064363

Sales Tax; Protest;	Asst. AAG Assigned:	Scott Simmons
Declaratory Judgment		
Filed: 10/20/98	Plaintiff's Counsel:	John Christian
Period: 08/1-30/98		Vinson & Elkins
Amount: \$2,054		Austin

Issue: Whether sales tax is due on the portion of country club membership fees designated as "capital improvement fees" and "gratuities."

Status: Discovery in progress.

Lebaron Hotel Corp., d/b/a The Lebaron Hotel v. Sharp, et al. Cause #91-17399
AG Case #92-10477

Sales Tax; Protest	Asst. AAG Assigned:	Steve Rodriguez
Filed: 12/13/91		
Period: 10/01/87 - 06/30/90	Plaintiff's Counsel:	Robert C. Cox
Amount: \$22,326		Dallas

Issue: Whether Comptroller could tax an arbitrary percentage of ingredients in complimentary mixed drinks and whether ingredients are exempt because they are taxed elsewhere. Is tax due on repairs to parking lot. Whether purchase of items from Ramada Inn is exempt as entire operating assets of a business or identifiable segment.

Status: Answer filed.

Lee Construction and Maintenance Co. v. Rylander, et al. Cause #99-01091
AG Case #99-1112160

Sales Tax; Protest	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 01/29/99		
Period: 01/01/92-12/31/95	Plaintiff's Counsel:	Timothy M. Trickey
Amount: \$31,830.47		The Trickey Law Firm Austin

Issue: Various issues, including credits for bad debts, tax paid, tax on new construction and tax paid in Louisiana, resale exemptions and waiver of penalty and interest.

Status: Discovery in progress.

Leyendecker Construction, Inc. v. Sharp, et al. Cause #98-08076
AG Case #98-1007248

Sales Tax; Protest	Asst. AAG Assigned:	Cecilia Gonzalez
Declaratory Judgment		
Injunction	Plaintiff's Counsel:	Donato D. Ramos
Filed: 07/27/98		Baldemar Garcia, Jr.
Period: 08/01/91-04/30/95		Person, Whiteworth, Ramos,
Amount: \$215,486.14		Borchers & Morales Laredo

Issue: Whether Plaintiff is responsible for sales tax it says it paid to its subcontractors and then collected from its customers as reimbursement. Related evidence issues.

Status: Defendant's plea to the jurisdiction and original answer filed 08/24/98. Court set on dismissal docket. Motion to retain filed.

Local Neon Co., Inc. v. Rylander, et al. Cause #99-15042
AG Case #001254036

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 12/31/99		
Period:	Plaintiff's Counsel:	James D. Blume
Amount: \$34,390.24		Jennifer S. Stoddard
		Blume & Stoddard Dallas
		Judy M. Cunningham Austin

Issue: Whether Plaintiff was doing business in Texas by delivering and installing its signs that were sold under contract negotiated outside of Texas. Whether Plaintiff is entitled to declaratory judgment and attorneys' fees.

Status: Discovery in progress.

Lopez-Gloria Construction Services, Inc. v. Sharp, et al. Cause #96-07811
AG Case #96-555542

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 07/05/96	Plaintiff's Counsel:	No attorney of record.
Period: 01/01/89-12/31/92		
Amount: \$791,171		

Issue: Plaintiff doesn't owe the tax and, if it does, the Comptroller abused its discretion in not settling under Tax Code §111.102.

Status: Answer filed. Plaintiff is pro se. Motion to Dismiss hearing set 03/16/01.

Macias, David Ronald v. Sharp Cause #96-07543
#03-98-00513-CV
AG Case #96-550565

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 06/28/96	Plaintiff's Counsel:	Mark N. Osborn
Period:		Kemp, Smith, Duncan & Hammond
Amount: \$		El Paso

Issue: Plaintiff contests the suspension of his Texas Customs Broker License and disagrees with the Comptroller's policy that brokers must actually see goods being exported before affixing their stamps.

Status: State's motion for summary judgment heard 06/10/98. Court ruled for State, upholding license suspension and finding standard of review to be substantial evidence. Notice of appeal filed. Oral argument occurred 03/24/99. Third Court of Appeals reversed substantial evidence determination and remanded for further proceedings. Partial summary judgment on Macias' license suspension 02/06/00. Summary judgment in Comptroller's favor obtained on licensee's suspension. Suspension period set at 90 days. Preparing for second appeal. Brief filed 12/11/00. Oral argument completed 01/24/01. Trial Court's decision suspending Plaintiff's license was affirmed on 02/28/01.

Mazanec Construction Co., Inc. v. Sharp, et al. Cause #96-06955

AG Case #96-538759

Sales Tax; Refund

Asst. AAG Assigned:

Steve Rodriguez

Filed: 06/14/96

Period: 04/01/90-12/31/93

Plaintiff's Counsel:

Judy M. Cunningham

Amount: \$9,571

Attorney at Law

Austin

Issue: Whether construction at a hospital owned by the federal government is exempt.

Status: Settlement pending.

Medaphis Physicians Services Corp. v. Sharp, et al. Cause #94-11610

AG Case #94-149390

Sales Tax; Protest and
Declaratory Judgment

Asst. AAG Assigned:

Blake Hawthorne

Filed: 09/16/94

Plaintiff's Counsel:

Gary Miles

Period: 05/01/94-06/30/94

Sherri Alexander

Amount: \$17,063

Johnson & Wortley

Dallas

Issue: Whether Plaintiff's services are taxable (1) insurance services, (2) debt collection services, or (3) data processing services, and whether Rules 3.330, 3.354, and 3.355 exceed the Comptroller's rule making authority.

Status: On hold pending conclusion of the audit.

Melek Corp. v. Rylander Cause #GN002146

AG Case #001339936

Sales Tax; Declaratory
Judgment

Asst. AAG Assigned:

Christopher Jackson

Filed: 07/28/00

Plaintiff's Counsel:

Mitzi T. Shannon

Period: 1998

Kemp Smith, P.C.

Amount: \$

El Paso

Issue: Plaintiff contests the suspension of its Texas Customs Broker License and disagrees with the Comptroller's policy on goods being exported.

Status: Answer filed.

Melek Corp. v. Rylander Cause #GN100441
AG Case #011410511

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 02/12/01	Plaintiff's Counsel:	Mitzi T. Shannon
Period: 2000		Susan Zulkowski
Amount: \$		Kemp Smith, P.C.
		El Paso

Issue: Plaintiff contests the suspension of its Texas Customs Broker License and disagrees with the Comptroller's policy on goods being exported.

Status: Answer filed.

Miller, Jerry W., Sr. v. Rylander, et al. Cause #GN000035
AG Case #001260140

Sales Tax; Protest	Asst. AAG Assigned:	Scott Simmons
Filed: 01/18/00		
Period: 01/01/94-06/30/97	Plaintiff's Counsel:	Stephen D. Skinner
Amount: \$33,745.00		Stephen D. Skinner & Associates
		Dallas

Issue: Whether Plaintiff owes tax on mowing services sold to contractors, home builders and developers engaged in new construction of residential properties. Whether Comptroller misapplied Rule 3.356(a)(5) to Plaintiff's business. Whether Plaintiff was denied due process, and whether Plaintiff should pay penalty and interest. Plaintiff also asserts that the burden of proof is on the Comptroller to show that his business was taxable.

Status: Discovery in progress.

National Business Furniture, Inc. v. Sharp, et al. Cause #98-03927
AG Case #98-932766

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 04/15/98	Plaintiff's Counsel:	Gilbert J. Bernal, Jr.
Period: 01/01/93-07/31/95		Stahl, Martens & Bernal
Amount: \$68,398		Austin

Issue: Whether promotional materials printed out-of-state and delivered into Texas are subject to use tax.

Status: Answer filed.

Neiman Marcus Group, Inc. v. Sharp, et al. Cause #93-10279-A
AG Case #93-340549

Sales Tax; Protest, Refund & Declaratory Judgment Filed: 08/26/93 Period: 01/01/87-03/31/90 Amount: \$1,046,465	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson David E. Cowling Charles Herring Jones, Day, Reavis & Pogue Dallas
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Issue: Plaintiff's customers buy gifts from Plaintiff outside Texas and have the gifts delivered by common carrier to Texas "donees." Should the Comptroller have assessed use tax on these "gift sends." Second Issue: whether tax is due on certain remodeling services. Plaintiff asks for attorneys fees under 42 USC §§1983 and 1988.

Status: Agreed judgment signed 03/11/96 on the gift send issue. An agreed order for severance was signed on 03/11/96 on the sales tax issues on remodeling services and attorneys' fees. Cause renumbered 93-10279-A. State filed a plea to jurisdiction on attorneys' fees on 10/06/93.

North Alamo Water Supply Corp. v. Rylander, et al. Cause #GN002424
AG Case #001344217

Sales Tax; Refund Filed: 08/16/00 Period: 04/94-07/00 Amount: \$160,000	Asst. AAG Assigned: Plaintiff's Counsel:	Nicole Galwardi Timothy M. Trickey The Trickey Law Firm Austin
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Issue: Whether Plaintiff is entitled to an exemption for electricity and equipment used to pressurize water for sale under the exemptions for equipment used in manufacturing and electricity used in processing.

Status: Mediation set 04/03/01.

North American Intelcom, Inc., et al. v. Sharp, et al. Cause #97-05318
AG Case #97-733563

Sales Tax; Refund Filed: 05/02/97 Period: 04/01/91-05/31/95 Amount: \$2,029,180	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Jasper G. Taylor, III Fulbright & Jaworski Houston
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Issue: Whether care, custody, and control of Plaintiff's public telephone equipment passed to their customers, so that Plaintiff could buy the equipment tax free for resale.

Status: Inactive.

North Texas Asset Management, Inc. v. Sharp, et al. Cause #94-08603
AG Case #94-113766

Sales Tax; Declaratory Judgment Filed: 7/14/94 Period: 05/02/91-12/31/91 Amount: \$24,307	Asst. AAG Assigned: Plaintiff's Counsel:	James Parsons Judy M. Cunningham Attorney at Law Austin
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Issue: Whether a sale of a business approved by the SBA (which held a lien and received the proceeds) is tantamount to a foreclosure sale so that no successor liability should attach.

Status: Answer filed; inactive. Parties are involved in informal discussions to resolve or eliminate issues currently in controversy.

Norwood Homes, Inc. v. Sharp, et al. Cause #98-05637
AG Case #98-970135

Sales Tax; Refund Filed: 05/28/98 Period: 10/01/92-06/30/96 Amount: \$77,887.44	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne John W. Mahoney Williams, Birnberg & Andersen Houston
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Issue: Whether certain cleaning services are taxable as real property services or are part of new construction of real property.

Status: Discovery in progress.

Paragon Communications v. Sharp, et al. Cause #97-10995

AG Case #97-825189

Sales Tax; Protest

Asst. AAG Assigned:

Jim Cloudt

Filed: 09/25/97

Period: 02/01/87-08/31/90

Plaintiff's Counsel:

Curtis J. Osterloh
Scott, Douglass &
McConnico
Austin

Amount: \$393,497

Issue: Whether municipal franchise fees paid by Plaintiff and passed on to its customers should be included in taxable cable services. Whether certain services, labor to lay new lines, purchased by Plaintiff were taxable repair and remodeling or were exempt new construction.

Status: Discovery in progress.

Perry Homes, A Joint Venture v. Sharp, et al. Cause #98-14226

AG Case #99-1093170

Sales Tax; Protest

Asst. AAG Assigned:

Christopher Jackson

Filed: 12/22/98

Period: 10/01/91-09/30/93

Plaintiff's Counsel:

Mark W. Eidman
Ray Langenberg
Paige Arnette
Scott, Douglass &
McConnico
Austin

Amount: \$550,978.17

Issue: Whether various service activities such as landscaping, cleaning and waste removal are taxable real property services. Whether any tax due is owed by independent contractor service providers under a tax- included contract. Whether tax was assessed on non-taxable new construction. Whether the assessment violates equal protection and whether interest should be waived.

Status: Settlement discussions in progress.

Peter Piper, Inc. and L & H Pacific, L.L.C. v. Sharp, et al. Cause #96-11750
AG Case #96-613454

Sales Tax; Protest Filed: 09/27/96 Period: 08/01/89-06/30/92 Amount: \$155,404	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Richard L. Rothfelder Craig Estlinbaum Kirkendall, Isgur & Rothfelder Houston
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Issue: Whether prizes obtained by collecting tickets from amusement machines in a restaurant are “purchased” by the customer as part of the price of the food.

Status: Discovery in progress.

Petrolite Corp. v. Sharp, et al. Cause #91-13885
AG Case #91-149840

Sales Tax; Protest and Refund Filed: 09/27/91 Period: 04/01/84 - 03/31/88 Amount: \$432,105	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Resale certificates; taxable maintenance services; taxability of various chemicals and other tangible personal property used in oil well services.

Status: Inactive.

Pflugerville, City of v. Capital Metropolitan Transportation Authority and Carole Keeton Rylander Cause #GV100065
AG Case #

Sales Tax; Declaratory Judgment Filed: 01/11/01 Period: 01/22/00-07/01/00 Amount: \$	Asst. AAG Assigned: Plaintiff's Counsel:	J. Bruce Scrafford Mark L. Hawkins Armbrust, Brown & Davis Austin
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Issue: What amounts of local tax are due to the City of Pflugerville and Capital Metro.

Status: Answer filed.

Phelan Co., The v. Sharp, et al. Cause #98-00504
AG Case #98-884283

Sales Tax; Protest &
Declaratory Judgment
Filed: 01/15/98
Period: 1988-1992
Amount: \$60,587

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Rick Harrison
Harrison & Rial
Austin

Gilbert J. Bernal, Jr.
Stahl, Martens & Bernal
Austin

Issue: Whether the sample audit resulted in an incorrect assessment because it did not represent actual business conditions. Whether the audit was conducted in accordance with generally recognized sampling techniques.

Status: Judgment for Plaintiff. Pending on attorneys' fee claim.

Praxair, Inc. v. Sharp, et al. Cause #97-03919 (consolidated with Cause No. 95-00690,
Praxair, Inc. v. Sharp, et al.)
AG Case #97-706272

Sales Tax; Refund &
Declaratory Judgment
Filed: 04/01/97
Period: 01/01/90-12/31/90
Amount: \$57,815

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

Gerard A. Desrochers
Baker Botts
Houston

Issue: Whether the Comptroller erroneously denied Plaintiff's claim for refund of tax paid on manufacturing equipment, alleging that Plaintiff was not engaged in actual manufacturing.

Status: See Cause No. 95-00690, *Praxair, Inc. v. Sharp, et al.*

Praxair, Inc. v. Sharp, et al. Cause #95-00690
AG Case #95-214921

Sales Tax; Refund &
Declaratory Judgment
Filed: 01/18/95
Period: 1990
Amount: \$74,608

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

Gerard A. Desrochers
Baker Botts
Houston

Issue: Whether the Comptroller erroneously denied Plaintiff's claim for refund of tax paid on manufacturing equipment, alleging that Plaintiff was not engaged in actual manufacturing.

Status: Discovery in progress. Stipulation of facts in progress.

Prodigy Services Co. v. Rylander, et al. Cause #99-02693

AG Case #99-1130410

Sales Tax; Protest

Filed: 03/05/99

Period: 01/01/93-06/30/96

Amount: \$206,971.88

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

Gilbert J. Bernal, Jr.
Stahl, Martens & Bernal
Austin

Martin I. Eisenstein
Brann & Isaacson
Lewiston, Maine

Issue: Whether use tax is owed on catalogs mailed from out-of-state. Whether imposition of use tax violates the commerce clause, equal protection and equal taxation. Whether taxpayer may recover attorneys' fees under the Uniform Declaratory Judgments Act.

Status: Answer filed.

R Communications, Inc. f/k/a RN Communications, Inc. v. Sharp, et al. Cause #91-4893

#03-91-00390CV

AG Case #91-62355

Sales Tax; Declaratory
Judgment

Filed: 04/08/91

Period: 10/01/80 - 11/02/84

Amount: \$None (Plaintiff
was assessed \$67,836 tax
but did not pay)

Asst. AAG Assigned:

Plaintiff's Counsel:

Gene Storie

Mark How
Short, How, Frels &
Tredoux
Dallas

Issue: Whether a taxpayer can be required to pay the disputed tax before filing suit in district court. Constitutionality of §112.108 under Texas Constitution Open Courts provision.

Status: District Court granted State's plea to the jurisdiction. State won appeal. Supreme Court reversed and remanded on 04/27/94. State's motion for rehearing denied. Inactive.

RAI Credit Corp. v. Rylander, et al. Cause #GN003556
AG Case #011395266

Sales Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 12/12/00	Plaintiff's Counsel:	David Cowling
Period: 01/01/89-12/31/93		Gregory E. Perry
Amount: \$297,616.32		Jones, Day, Reavis & Pogue Dallas

Issue: Whether Plaintiff lacks nexus for collection of use tax on accounts receivable that were factored to it. Whether Plaintiff is a “seller” or “retailer” engaged in business in Texas. Whether Plaintiff is liable under §111.016 as a person who received tax. Whether imposition of tax denies equal protection. Plaintiff also seeks declaratory relief and attorneys’ fees.

Status: Answer filed.

Roadway Express, Inc. v. Rylander, et al. Cause #GN002831
AG Case #001357631

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 09/25/00	Plaintiff's Counsel:	David Cowling
Period: 04/01/88-05/31/92		Robert Lochridge
Amount: \$713,686.05 \$206,053.87		Jones, Day, Reavis & Pogue Dallas

Issue: Whether various equipment used by the Plaintiff with its trucks is exempt from use tax as tangible personal property sold to a common carrier for use outside the state. Alternatively, whether the equipment had been taxed as vehicle components under the interstate motor carrier tax and could not be taxed as “accessories.” Alternatively, whether taxing 100% of the value of the equipment violates the Commerce Clause because of a lack of substantial nexus and of fair apportionment. Whether all tax was paid on Plaintiff’s repair and remodeling contracts and capital assets. Plaintiff also seeks declaratory relief and attorneys’ fees.

Status: Answer filed.

Samedan Oil Corp. v. Sharp, et al. Cause #98-14105
AG Case #99-1097593

Sales Tax; Protest Filed: 12/18/98 Period: 01/01/90-12/31/93 Amount: \$19,652.35	Asst. AAG Assigned: Plaintiff's Counsel:	Scott Simmons Mark W. Eidman Ray Langenberg Curtis Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether information concerning oil and gas lease ownership and marketing are taxable information services. If so, whether the services were sold or used in Texas. Whether interest and penalty should be waived.

Status: Discovery in progress. Change of counsel sent. Negotiations in progress.

Sam Houston Race Park, Ltd. v. Rylander, et al. Cause #GN001096
AG Case #001294263

Sales Tax; Refund Filed: 04/13/00 Period: 10/01/93-04/30/95 Amount: \$43,025.00	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne L.G. Skip Smith David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether Plaintiff's purchase of "totalizator" services, which provide betting information to accompany live pari-mutuel and simulcasts of pari-mutuel races, is not taxable as a data processing service. Whether totalizator services, if they are taxable, are exempt for resale as an integral part of Plaintiff's taxable amusement service.

Status: Answer filed.

Schmitz Industries, Inc. v. Sharp Cause #95-15485
AG Case #96-436841

Sales Tax; Protest Filed: 12/15/95 Period: 04/01/89-12/31/92 Amount: \$4,418	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Charles E. Klein Attorney at Law Dallas
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Issue: Plaintiff alleges that the audit assessment is wrong because some of the transactions in the sample period are not representative of Plaintiff's business, and some transactions include tax exempt molds, dies and patterns with a useful life of six months or less.

Status: Answer filed.

Schoenborn & Doll Enterprises, Inc. v. Rylander, et al. Cause #99-07605
AG Case #99-1187592

Sales Tax; Protest & Declaratory Judgment Filed: 07/01/99 Period: 07/01/95-05/31/97 Amount: \$140,936.92	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Kevin W. Morse Blazier, Christensen & Bigelow Austin
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Issue: Whether the portion of Plaintiff's gym membership fee allocated to aerobic training is included in Plaintiff's taxable amusement services. Whether the Comptroller improperly disregarded the rule addressing non-taxable aerobic and tanning services under the amusement services tax. Whether the Comptroller should have applied its detrimental reliance policy.

Status: Inactive.

Sears Roebuck & Co. v. Rylander, et al. Cause #99-04138
AG Case #99-1152398

Sales Tax; Refund Filed: 04/08/99 Period: 10/01/88-12/31/91 Amount: \$1,792,421.59	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether use tax is owed on catalogs printed and shipped from out-of-state. Whether any taxable use was made or any consideration received by plaintiff. Whether “distribution” is a taxable use and whether the Comptroller’s rule identifying it as such is valid. Whether imposition of the tax violates the due process, commerce, or equal protection clauses. Alternatively, whether calculation of the tax as on the correct cost basis, whether tax should not be collected because the catalogs are “books,” and whether penalty should be waived.

Status: Answer filed.

Service Merchandise Co., Inc. v. Sharp, et al. Cause #98-11572

AG Case #98-1063308

Sales Tax; Protest Filed: 10/13/98 Period: 01/01/92-12/31/93 Amount: \$413,569	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether the purchase of sales catalogs printed out-of-state and shipped to Plaintiff's customers in Texas (at no charge to the customer) incur sales tax.

Status: Answer filed. On hold. Plaintiff filed bankruptcy in Tennessee on 03/25/99.

Sharyland Water Supply Corp. v. Rylander, et al. Cause #9910283

AG Case #001291798

Sales Tax; Refund Filed: 09/03/99 Period: Amount: \$	Asst. AAG Assigned: Plaintiff's Counsel:	Nicole Galwardi Timothy M. Trickey The Trickey Law Firm Austin
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Issue: Whether Plaintiff is entitled to an exemption for electricity and equipment used to pressurize water for sale under the exemptions for equipment used in manufacturing and electricity used in processing.

Status: Answer filed.

Southwest Pay Telephone Corp., Successor in Interest to Southwest Pay Telephone Systems, Inc. v. Sharp, et al. Cause #97-00684
AG Case #97-662434

Sales Tax; Refund	Asst. AAG Assigned:	Blake Hawthorne
Filed: 01/17/97		
Period: 03/01/91-12/31/94	Plaintiff's Counsel:	Mary S. Dietz
Amount: \$117,600		Fulbright & Jaworski Houston

Issue: Whether Plaintiff transferred “care, custody, and control” of telephone equipment to the customers of its public telephone service such that it could buy the equipment tax-free per Rule 3.344 (e).

Status: Inactive.

Spaw-Glass, Inc. and Spaw Glass Construction Co. v. Rylander, et al. Cause #99-06716
AG Case #99-1177965

Sales Tax; Protest & Refund	Asst. AAG Assigned:	Scott Simmons
Filed: 06/11/99		
Period: 04/01/93-03/31/96	Plaintiff's Counsel:	Jasper G. Taylor, III
10/01/93-06/30/96		C. Rhett Shaver
Amount: \$134,067.87		Fulbright & Jaworski
\$34,469.19		Houston

Issue: Whether Plaintiff is not subject to sales tax because it was a lump sum contractor on the transactions at issue. Whether penalty and interest should be waived.

Status: Negotiations completed. Reviewing Plaintiffs’ offer of settlement.

Sprint International Communications, Inc. v. Sharp, et al. Cause #96-14298
AG Case #96-637296

Sales Tax; Refund	Asst. AAG Assigned:	Steve Rodriguez
Filed: 11/22/96		
Period: 02/01/86-01/31/90	Plaintiff's Counsel:	Wallace M. Smith
Amount: \$1,269,474		Donald L. Stuart
		R. Kemp Kasling
		Drenner & Stuart
		Austin

Issue: Whether networking services are taxable as telecommunications services.

Status: Answer filed.

Summit Photographix, Inc. v. Rylander, et al. Cause #GN001808

AG Case #001323633

Sales Tax; Declaratory
Judgment

Filed: 06/23/00

Period: 01/01/94-12/31/96

Amount: \$6,532,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Mark D. Hopkins
Fields & Hopkins
Austin

Hilary Thomas
Kondos & Kondos Law
Offices
Richardson

Issue: Whether Plaintiff is a direct sales company and may be regarded as a retailer for sales made by independent retailers of business start-up kits. Whether the Comptroller's rule defining direct sales organizations violates due process. Whether §151.024 was applied retroactively. Whether the items at issue are not taxable tangible personal property. Whether the Comptroller erred in basing the assessment on the suggested retail price of all issued items. Whether penalty and interest should be waived. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Sysco Food Services of Houston, L.P. (f/k/a Sysco Food Service of Houston, Inc.) v. Rylander, et al. Cause #GN100633

AG Case #011420734

Sales Tax; Refund &
Declaratory Judgment

Filed: 03/01/01

Period: 01/01/94-12/31/96

Amount: \$196,492.74

Asst. AAG Assigned:

Plaintiff's Counsel:

Nicole Galwardi

Judy M. Cunningham
Austin

Issue: Whether electricity used to lower the temperature of food products is exempt as electricity used in processing. Whether equipment is exempt for the same reason.

Status: Answer filed.

TCCT Real Estate, Inc. v. Rylander, et al. Cause #99-11647
AG Case #991219239

Sales Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Declaratory Judgment		
Filed: 10/06/99	Plaintiff's Counsel:	David Cowling
Period: 10/01/91-03/31/93		Robert Lochridge
Amount: \$146,484.05		Jones, Day, Reavis & Pogue
		Dallas

Issue: Whether Plaintiff sold electricity for commercial use when it obtained electrical service under a management agreement for another company which used the electricity in manufacturing or processing. Whether the exemption for electricity used in manufacturing requires the purchaser of electricity to be the user. Whether Plaintiff can be held as a seller of electricity in violation of the TPURA. Whether Plaintiff's right to equal and uniform taxation has been violated. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

TCCT Real Estate, Inc. as Successor to TCC Austin Industrial Overhead v. Rylander, et al. Cause #99-11648
AG Case #99-1219221

Sales Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Declaratory Judgment		
Filed: 10/05/99	Plaintiff's Counsel:	David Cowling
Period: 07/01/89-12/31/91		Robert Lochridge
Amount: \$479,719.44		Jones, Day, Reavis & Pogue
		Dallas

Issue: Whether Plaintiff sold electricity for commercial use when it obtained electrical service under a management agreement for another company which used the electricity in manufacturing or processing. Whether the exemption for electricity used in manufacturing requires the purchaser of electricity to be the user. Whether Plaintiff can be held as a seller of electricity in violation of the TPURA. Whether Plaintiff's right to equal and uniform taxation has been violated. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress.

TDI-Halter, Inc. v. Rylander, et al. Cause #GN100339
AG Case #011409653

Sales Tax; Refund	Asst. AAG Assigned:	Gene Storie
Filed: 02/01/01		
Period: 01/01/93-06/30/96	Plaintiff's Counsel:	Mark W. Eidman
Amount: \$475,000		Ray Langenberg
		Eric Hagenswold
		Scott, Douglass &
		McConnico
		Austin

Issue: Whether conversion of drilling rigs to self-propelled, deep water rigs is manufacturing under the statute and Comptroller rules. Whether dredging is non-taxable maintenance of real property. Alternatively, whether interest should be waived.

Status: Answer filed.

Tennessee Gas Pipeline Co. v. Sharp, et al. Cause #98-09521
AG Case #98-1022296

Sales Tax; Refund	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 08/25/98		
Period: 01/01/94-04/03/96	Plaintiff's Counsel:	Ron Patterson
Amount: \$85,430		Kliwer, Breen, Garaton,
		Patterson & Malone, Inc.
		Austin
		Michael R. Garatoni
		Guaranty Center
		San Antonio

Issue: Plaintiff contends that because it operates a common-carrier pipeline and is a certificated or licensed carrier of property it may avoid sales tax on repair, remodeling, and maintenance services purchased in connection with the maintenance and repair of aircraft Plaintiff owns and uses in operating its common-carrier pipeline.

Status: Discovery in progress. Unopposed motion to retain filed. Plaintiff will propose stipulations.

Texas Gulf, Inc. v. Bullock, et al. Cause #485,228
AG Case #90-311185

Sales Tax; Refund	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 06/05/90		
Period: 01/01/85 - 06/30/88	Plaintiff's Counsel:	Ira A. Lipstet
Amount: \$294,000		Jenkins & Gilchrist
		Austin

Issue: Are pipes exempt as manufacturing equipment or taxable as intra plant transportation.

Status: State's plea to the jurisdiction denied. Settlement negotiations in progress.

Transcontinental Gas Pipeline Corp. v. Rylander, et al. Cause #99-06997
AG Case #99-1178526

Sales Tax; Protest	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 06/17/99		
Period: 03/93-05/95	Plaintiff's Counsel:	Ron Patterson
Amount: \$112,684.43		Kliewer, Breen, Garatoni,
		Patterson & Malone
		Austin
		Michael R. Garatoni
		Kliewer, Breen, Garatoni,
		Patterson & Malone
		San Antonio

Issue: Whether Plaintiff, a common carrier gas pipeline operator, may claim a sales and use tax exemption on its purchase of an airplane. Whether airplane repair and replacement parts are exempt.

Status: Answer filed.

Union Carbide Corp. v. Rylander, et al. Cause #GN000580
AG Case #001261452

Sales Tax; Protest	Asst. AAG Assigned:	Steve Rodriguez
Filed: 01/13/00		
Period: 01/01/89-12/31/92	Plaintiff's Counsel:	Mark W. Eidman
Amount: \$575,857.40		Ray Langenberg
		Curtis Osterloh
		Scott, Douglass &
		McConnico
		Austin

Issue: Whether Plaintiff is entitled to an exemption on labor charges for installing floating roofs on tanks at its chemical plant because: (1) the roofs are exempt pollution control equipment, (2) the labor was for non-taxable new construction, or (3) the labor was for remodeling of tangible personal property.

Status: Answer filed.

Unit 82 Joint Venture v. Rylander, et al. Cause #GN001888

AG Case #001327964

Sales Tax; Protest

Asst. AAG Assigned:

Scott Simmons

Filed: 07/03/00

Period: 07/01/93-12/31/96

Plaintiff's Counsel:

H. Christopher Mott
Krafsur Gordon Mott Davis
& Woody
El Paso

Amount: \$44,519.03

Issue: Whether Plaintiff's initial finish-out work is non-taxable new construction.

Status: Discovery in progress.

United Services Automobile Association v. Sharp, et al. Cause #97-02927

AG Case #97-694723

Sales Tax; Refund

Asst. AAG Assigned:

Jim Cloudt

Filed: 03/10/97

Period: 02/01/91-07/31/94

Plaintiff's Counsel:

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Amount: \$656,667

Issue: Whether certain professional and leak detection services are taxable. Whether tax is due on material printed out-of-state and mailed directly to Texas customers.

Status: Settlement pending.

U.S. On-Line Cable v. Rylander, et al. Cause #99-09021
AG Case #99-1198896

Sales Tax; Refund	Asst. AAG Assigned:	Scott Simmons
Filed: 08/05/99		
Period: 10/01/94-07/31/98	Plaintiff's Counsel:	James F. Martens
Amount: \$115,958.69		Stahl, Martens & Bernal Austin

Issue: Whether Plaintiff is entitled to a sale for resale exemption on cable equipment it purchases from out-of-state vendors and users to provide cable service to apartment dwellers.

Status: Settlement negotiations in progress. Reviewing plaintiff's offer of settlement.

USA Waste Services of Houston, Inc. v. Rylander, et al. Cause #GN003453
AG Case #001388065

Sales Tax; Protest	Asst. AAG Assigned:	Scott Simmons
Filed: 12/01/00		
Period: 01/01/94-03/31/97	Plaintiff's Counsel:	Mark W. Eidman
Amount: \$14,016.28		Ray Langenberg Eric Hagenswold Scott, Douglass & McConnico Austin

Issue: Whether steam cleaning done for Plaintiff's customers by a third party is a sale for resale as an integral part of Plaintiff's taxable waste removal services.

Status: Answer filed.

Waller Hotel Group, Inc. v. Sharp, et al. Cause #98-03990
AG Case #98-939849

Sales Tax; Refund	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 04/16/98		
Period: 03/01/91-08/31/94	Plaintiff's Counsel:	Gilbert J. Bernal, Jr.
Amount: \$51,614		Stahl, Martens & Bernal Austin
		Mark Cohen Attorney at Law Austin

Issue: Whether purchases of gas and electricity at Plaintiff's hotel were exempt as residential use, based on a utility study conducted by Plaintiff's expert.

Status: Discovery in progress.

West Texas Pizza, Limited Partnership v. Sharp, et al. Cause #96-11751

AG Case #96-611633

Sales Tax; Protest

Filed: 09/27/96

Period: 06/01/88-06/30/92

Amount: \$35,247

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

Richard L. Rothfelder
Milissa M. Magee
Kirkendall, Isgur &
Rothfelder
Houston

Issue: Whether prizes obtained by collecting tickets from amusement machines in a restaurant are "purchased" by the customer as part of the price of the food.

Status: Discovery in progress.

Westar Hotels, Inc. v. Sharp, et al. Cause #97-06182

AG Case #97-743945

Sales Tax; Refund

Filed: 05/23/97

Period: 11/01/90-07/31/94

Amount: \$73,827

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

Gilbert J. Bernal, Jr.
Stahl, Martens & Bernal
Austin

Issue: Whether Plaintiff owes tax on electricity used in its hotels.

Status: Answer filed.

Young's Beer Barn, Inc. v. Sharp Cause #94-14347

AG Case #94-181807

Sales Tax; Injunction

Filed: 11/17/94

Period: 06/01/89-07/31/92

Amount: \$144,608

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

Kenneth Thomas
Dallas

Issue: Plaintiff states, "The Comptroller erred in its audit of the plaintiff by including bank transactions in the taxable sales of the plaintiff for the period... ." Plaintiff also asks for an injunction against collection action.

Status: Discovery answered by Plaintiff.

Insurance Tax

All American Life Insurance Co., et al. v. Sharp, et al. Cause #98-00195

#03-00-427-CV

AG Case #98-880394

Insurance Premium &
Insurance Maintenance Tax;
Protest
Filed: 01/07/98
Period: 1991-1994
Amount: \$276,151
(Premium)
\$4,804 (Maintenance)

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Barry K. Bishop
Clark, Thomas & Winters
Austin

Dudley D. McCalla
Heath, Davis & McCalla
Austin

Jay A. Thompson
Thompson, Coe, Cousins &
Irons
Austin

Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Trial set 01/18/00. Judgment for State signed 03/22/00. Plaintiff's filed request for findings of fact and conclusions of law 04/06/00. Plaintiffs filed notice of appeal. Appellants' brief filed 09/29/00. Appellees' brief due 12/01/00. Oral argument held 01/24/01.

All American Life Insurance Co. v. Sharp, et al. Cause #98-07917 (Consolidated with Cause #98-00195, *All American Life Insurance Co., et al. v. Sharp, et al.*)

AG Case #98-1001902

Gross Premium Tax; Protest
Filed: 07/24/98
Period: 1994-1996
Amount: \$29,169

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Dudley D. McCalla
Heath, Davis & McCalla
Austin

Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Consolidated with Cause #98-00195, *All American Life Insurance Co., et al. v. Sharp, et al.*

Allianz Underwriters Insurance Co. v. Rylander, et al. Cause #GN000663
AG Case #001280114

Insurance Premium Tax; Protest, Injunction & Declaratory Judgment Filed: 03/02/00 Period: 01/01/90-12/31/95 Amount: \$365,506.54	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Stephen L. Phillips Brian C. Newby Julie K. Lane Cantey & Hanger, Roan & Autrey Austin
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Issue: Whether Plaintiff, an eligible surplus lines insurer, owes tax for unauthorized insurance. Whether tax should have been collected from the surplus lines agent or from the insured. Whether the Comptroller's assessment is contrary to the McCarran-Ferguson Act and constitutional due process. Whether the Comptroller has authority to assess taxes due before 09/01/93. Whether the Comptroller's rule on penalty and interest is arbitrary and capricious. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress.

Allmerica Financial Life Insurance Co. and Annuity Co. v. Rylander, et al. Cause
#GN001378
AG Case #001304807

Insurance Premium Tax; Protest & Declaratory Judgment Filed: 05/10/00 Period: 1992-1995 Amount: \$190,352.89 \$43,715.28	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Steven D. Moore Jackson Walker L.L.P. Austin
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Issue: Whether premium taxes are owed on internal rollover transactions. Plaintiff also seeks declaratory judgment under the UDJA and APA and attorneys' fees.

Status: Answer filed. Should be resolved as for *All American Life Insurance, et al. v. Sharp, et al.*

American Bankers Insurance Co. of Florida, et al. v. Ann Richards, et al. Cause #396,975
AG Case #86-1483

Gross Premium Tax; Protest
& Declaratory Judgment
Filed: 05/08/86
Period: 1985-1988
Amount: \$1,745,569

Asst. AAG Assigned:

Steve Rodriguez

Plaintiff's Counsel:

Fred B. Werkenthin
Jackson & Walker
Austin

Issue: Whether Tex. Ins. Code art. 4.10 unconstitutionally discriminates against foreign property and casualty companies by basing the premium tax rate on their percentage of Texas investments (equal protection). (Pleadings refer to art. 4.10, but protest letters refer to arts. 4.11 and 21.46.) Also seeks recovery and attorneys' fees pursuant to 42 U.S.C. §1983.

Status: Inactive.

American General Life Insurance Co., American National Life Insurance Co., and American National Insurance Co. v. Sharp, et al. Cause #98-13996 (Consolidated with Cause #98-00195, *All American Life Insurance Co., et al. v. Sharp, et al.*)
AG Case #99-1093402

Maintenance & Gross
Premium Tax; Refund
Filed: 12/16/98
Period: 01/01/91-12/31/94
Amount: \$204,695.81

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Dudley D. McCalla
Heath, Davis & McCalla
Austin

Issue: Whether "internal rollovers" of existing life insurance policies result in gross premiums subject to tax.

Status: Consolidated with Cause #98-00195, *All American Life Insurance Co., et al. v. Sharp, et al.*

American International Specialty Lines Insurance Co. v. Rylander, et al. Cause #GN002666
AG Case #001351998

Insurance Premium Tax; Protest & Declaratory Judgment Filed: 09/08/00 Period: 1995 Amount: \$362,975.97	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Anthony Icenogle Joseph C. Boggins DeLeon & Boggins Austin
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Issue: Whether an authorized surplus lines insurer is required to pay unauthorized insurance tax when the Comptroller is unable to verify payment of tax by the agent. Whether the Comptroller wrongfully relied on another hearings decision as precedent. Plaintiff also seeks injunctive and declaratory relief and attorneys' fees.

Status: Discovery in progress. Hearing on motion for summary judgment set 03/08/01.

Dow Chemical Co. v. Rylander, et al. Cause #99-05725
#03-00-354-CV
AG Case #99-1168444

Independently Procured Insurance Tax; Protest Filed: 05/17/99 Period: 1991-1997 Amount: \$427,148.80	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether statute levying tax on independently procured insurance is unconstitutional under the *Todd Shipyards* case.

Status: Plaintiff's summary judgment motion filed. State's motion for summary judgment granted 04/06/00. Plaintiff filed notice of appeal. Dow's brief filed. Comptroller's brief filed. Argued 11/15/00. Reversed and rendered 01/25/01. Comptroller's petition due 03/12/01.

Dow Chemical Co., The v. Rylander, et al. Cause #GN002457

AG Case #001348606

Independently Procured
Insurance Tax; Protest
Filed: 08/22/00
Period: 1998 & 1999
Amount: \$61,711.06

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Issue: Whether statute levying tax on independently procured insurance is unconstitutional under the *Todd Shipyards* case.

Status: Answer filed.

Federal Home Life Insurance Co. v. Rylander, et al. Cause #99-06142

AG Case #99-1173279

Retaliatory Tax; Protest &
Declaratory Judgment
Filed: 05/26/99
Period: 1998
Amount: \$9,328.01

Asst. AAG Assigned:

Steve Rodriguez

Plaintiff's Counsel:

Ron K. Eudy
Sneed, Vine & Perry
Austin

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Settled.

First Colony Life Insurance Co. v. Rylander, et al. Cause #99-06143

AG Case #99-1173287

Retaliatory Tax; Protest &
Declaratory Judgment
Filed: 05/26/99
Period: 1998
Amount: \$192,371.48

Asst. AAG Assigned:

Steve Rodriguez

Plaintiff's Counsel:

Ron K. Eudy
Sneed, Vine & Perry
Austin

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Settled.

GE Life and Annuity Assurance Co., f/k/a Life Insurance Co. of Virginia v. Rylander, et al. Cause #99-06145
AG Case #99-1173097

Retaliatory Tax; Protest &
Declaratory Judgment
Filed: 05/26/99
Period: 1998
Amount: \$59,574.64

Asst. AAG Assigned:

Steve Rodriguez

Plaintiff's Counsel:

Ron K. Eudy
Sneed, Vine & Perry
Austin

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Settled.

General Electric Capital Assurance Co. v. Rylander, et al. Cause #99-06144
AG Case #99-1173295

Retaliatory Tax; Protest &
Declaratory Judgment
Filed: 05/26/99
Period: 1998
Amount: \$46,658.03

Asst. AAG Assigned:

Steve Rodriguez

Plaintiff's Counsel:

Ron K. Eudy
Sneed, Vine & Perry
Austin

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Settled.

Great Northern Insured Annuity Corp. v. Rylander, et al. Cause #99-06146
AG Case #99-1173089

Retaliatory Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/26/99	Plaintiff's Counsel:	Ron K. Eudy
Period: 1998		Sneed, Vine & Perry
Amount: \$8,459.31		Austin

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Settled.

Harvest Life Insurance Co., The v. Rylander, et al. Cause #99-06147
AG Case #99-1173063

Retaliatory Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/26/99	Plaintiff's Counsel:	Ron K. Eudy
Period: 1998		Sneed, Vine & Perry
Amount: \$26,640.79		Austin

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Settled.

Heritage Life Insurance Co. v. Rylander, et al. Cause #99-06148
AG Case #99-1172958

Retaliatory Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/26/99	Plaintiff's Counsel:	Ron K. Eudy
Period: 1998		Sneed, Vine & Perry
Amount: \$10,987.86		Austin

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Settled.

IDS Life Insurance Co. v. Rylander, et al. Cause #99-13368 (*Consolidated with Cause #98-00195, All American Life Insurance Co., et al. v. Sharp, et al.*)
AG Case #99-1238965

Insurance Tax; Protest Filed: 11/16/99 Period: Amount: \$234,383.82 \$2,039.79	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Jay A. Thompson Clark, Thomas & Winters Austin
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Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Consolidated with Cause #98-00195, *All American Life Insurance Co, et al. v. Sharp, et al.*

Lexington Insurance Co., Landmark Insurance Co. v. Rylander, et al. Cause #GN100569
AG Case #011417896

Insurance Premium Tax Tax; Protest & Declaratory Judgment Filed: 02/22/01 Period: 1992-1995 Amount: \$1,596,196.63 \$36,174.92	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Anthony Icenogle Joseph C. Boggins De Leon & Boggins Austin
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Issue: Whether an authorized surplus lines insurer is required to pay unauthorized insurance tax when the Comptroller is unable to verify payment of tax by the agent. Whether the Comptroller wrongfully relied on another hearings decision as precedent. Plaintiff also seeks injunctive and declaratory relief and attorneys' fees.

Status: Answer filed.

Liberty National Life Insurance Co. v. Martha Whitehead, et al. Cause #93-08432
AG Case #93-311009

Retaliatory Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 07/15/93	Plaintiff's Counsel:	Ron Eudy
Period: 1990-1992		Sneed, Vine & Perry
Amount: \$54,511		Austin

Issue: Whether art. 21.46 retaliatory tax has been properly applied to Plaintiff's tax rates in Texas and Alabama, and whether the tax violates equal taxation and equal protection. (Also Plaintiff seeks recovery under the Declaratory Judgments Act and 42 U.S.C. §1983 including attorneys' fees.)

Status: Settled.

Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. Cause #484,745
AG Case #90-304512

Gross Premium Tax; Protest	Asst. AAG Assigned:	Gene Storie
Filed: 05-24-90		
Period: 1985-1986	Plaintiff's Counsel:	Mary K. Wolf
1989-1992		Austin
Amount: \$1,848,606		

Issue: Whether insurance taxes are owed by insurance companies on dividends applied to paid-up additions and renewal premiums.

Status: 9th Amended Petition filed. Settlement discussed, and partial settlement agreed to. Final judgment signed on paid-up additions issue. Renewal premium issue severed and retained on docket.

Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. Cause #484,796
AG Case #90-304503

Maintenance Tax; Protest	Asst. AAG Assigned:	Gene Storie
Filed: 05-23-90		
Period: 1989-1991	Plaintiff's Counsel:	Fred B. Werkenthin
Amount: \$1,616,497		Jackson & Walker
		Austin

Issue: Whether Tex. Ins. Code art. 21.07-6 is preempted by ERISA.

Status: One Plaintiff has submitted documentation supporting a refund. Case will be concluded in accordance with *NGS v. Barnes*, 998 F.2d 296 (5th Cir. 1993). Severance and final judgment entered for Metropolitan. Awaiting documentation for other Plaintiffs.

Principal Life Insurance Co. v. Rylander, et al. Cause #99-06141

AG Case #99-1173105

Retaliatory Tax; Refund &
Declaratory Judgment

Filed: 05/26/99

Period: 1998

Amount: \$256,577.79

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

Ron K. Eudy
Sneed, Vine & Perry
Austin

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Settled.

Redland Insurance Co. v. State of Texas, et al. Cause #91-15487

AG Case #91-168472

Gross Premium Tax; Protest
Filed: 11-05-91

Period: 1991

Amount: \$157,098

Asst. AAG Assigned:

Plaintiff's Counsel:

Gene Storie

W. Hollis Webb, Jr.
Harding, Bass, Fargason &
Booth
Lubbock

Issue: Whether premium tax is preempted for crop insurance guaranteed by federal Department of Agriculture.

Status: Inactive. (Same issue was decided against Kansas in recent 10th Circuit case.) Requesting non-suit from Plaintiff.

Security National Insurance Co. v. Rylander, et al. Cause #GN001503

AG Case #001310820

Insurance Premium Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 05/23/00	Plaintiff's Counsel:	Jay A. Thompson
Period: 1995-1998		Barry Bishop
Amount: \$1,226,220.50		Clark, Thomas & Winters Austin

Issue: Whether daily negative bank account balances should be adjusted to \$0 to compute the proper percentage of Texas investments for gross premiums tax.

Status: Answer filed.

Southwestern Life Insurance Co. v. Sharp, et al. Cause #98-11945

AG Case #98-1065840

Gross Premium Maintenance Tax; Protest	Asst. AAG Assigned:	Gene Storie
Filed: 10/22/98	Plaintiff's Counsel:	L.G. Skip Smith
Period: 01/01/92-12/31/95		Clark, Thomas & Winters
Amount: \$392,737		Austin

Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Answer filed. Will be determined as for *All American Life Insurance Co, et al. v. Sharp, et al.*.

Southwestern Life Insurance Co. v. Rylander, et al. Cause #GN000875

AG Case #001288869

Gross Premium Maintenance Tax; Protest & Refund	Asst. AAG Assigned:	Blake Hawthorne
Filed: 03/24/00	Plaintiff's Counsel:	L.G. Skip Smith
Period: 01/01/96-12/31/98		David H. Gilliland
Amount: \$384,446.75		Clark, Thomas & Winters Austin

Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: On hold pending outcome of *All American Life Insurance v. Rylander, et al.*

State Farm Life Insurance Co. v. Cornyn, et al. Cause #99-07980

AG Case #99-1187642

Gross Premium Tax; Protest,
Refund & Declaratory

Judgment

Filed: 07/13/99

Period: 1990

1992

1994

Amount: \$1,027,067.59

\$395,949.71

\$294,607.28

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Michael W. Jones

Thompson, Coe, Cousins &

Irons

Austin

Issue: Whether Plaintiff's debt instruments are mortgage loans or corporate bonds or other obligations for purposes of its Texas investments allocation. Whether Plaintiff's interests in limited partnerships qualified as real estate investments. Whether allocation of quarterly U.S. bond holdings was proper. Whether calculation of bank balances was proper. Alternatively, whether penalty should be waived. Plaintiff seeks attorneys' fees.

Status: Answer filed.

Texas Workers' Compensation Insurance Facility v. Comptroller Cause #96-07940

AG Case #96-555551

Maintenance Tax;
Declaratory Judgment

Filed: 07/09/96

Period: 1992-1995

Amount: \$

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Frank Stenger-Castro

Fred Lewis

Texas Workers'

Compensation Insurance

Facility

Austin

Issue: Plaintiff seeks a ruling that Rule 3.804(d) concerning a maintenance tax surcharge is invalid.

Status: Inactive. Court set on dismissal docket.

Texas Workers' Compensation Insurance Facility v. Comptroller, et al. Cause #97-03602
AG Case #97-700580

Maintenance Tax; Refund Filed: 03/25/97 Period: 1992-1995 Amount: \$23,623,585	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Larry Parks Long, Burner, Parks & Sealey Austin
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Issue: Whether the Facility may recover from the State the maintenance tax surcharge which it reimbursed to insurers.

Status: Plaintiff's amended motion for summary judgment filed. Hearing on cross motions held 03/07/01.

Union Fidelity Life Insurance Co. v. Rylander, et al. Cause #99-06149
AG Case #99-1173006

Retaliatory Tax; Protest & Declaratory Judgment Filed: 05/26/99 Period: 1998 Amount: \$147,554.42	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Settled.

Union Standard Insurance Co. v. Rylander, et al. Cause #GN003565
AG Case #011395308

Insurance Premium Tax Tax; Protest Filed: 12/13/00 Period: 01/01/93-12/31/96 Amount: \$216,572.39	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Jim Shawn Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether “cash fund investments” are Texas investments under the property and casualty insurance premium tax in effect during the audit period. Whether the property and casualty insurance premium tax should be interpreted like the life insurance premium tax. Whether Plaintiff is entitled to detrimental reliance relief because its qualified investment was not challenged by the Department of Insurance. Alternatively, whether Plaintiff should recover interest because of delay by the Comptroller in reaching a decision.

Status: Answer filed.

United American Insurance Co. v. Rylander, et al. Cause #99-06836

AG Case #99-1176355

Gross Premium Tax; Protest
& Declaratory Judgment

Filed: 06/15/99

Period: 1990-1996

Amount: \$1,262,878.98

\$7,487.00

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Sam R. Perry

Sneed, Vine & Perry

Austin

Issue: Whether Plaintiff's investment in a limited partnership which held Texas mineral interests qualifies as a Texas investment for purposes of reducing Plaintiff's gross premiums tax rate. Whether investments in limited partnerships should be treated the same as investments in corporations. Whether Plaintiff was denied equal protection under the federal or state constitutions. Plaintiff also asks for attorneys' fees.

Status: Answer filed.

Universe Life Insurance Co. v. State of Texas Cause #97-05106

AG Case #97-727302

Insurance Tax; Protest

Filed: 04/29/97

Period: 1993

Amount: \$56,958

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Larry Parks

Long, Burner, Parks &

Sealey

Austin

Issue: Whether plaintiff should be given credit against tax due for examination fees paid to the state in connection with a market conduct examination report ordered by the Texas Department of Insurance. Plaintiff also asks for penalty and interest waiver.

Status: Cross-motions for summary judgment heard 11/12/97. Summary judgment granted for Plaintiff. State has appealed. Case submitted without oral argument 07/06/98. Affirmed in part, reversed and remanded in part 03/11/99. State's motion for rehearing denied. Petition for review filed 06/01/99. Briefs on merits requested by Court. State's brief filed 10/18/99. Petition denied. Case remanded to trial court.

Universe Life Insurance Co., The v. Cornyn, et al. Cause #GN002605
AG Case #001348580

Insurance Premium Tax Tax; Refund	Asst. AAG Assigned:	Gene Storie
Filed: 09/01/00	Plaintiff's Counsel:	Larry Parks
Period: 1993		Long, Burner, Parks,
1994		McClellan & Delargy
Amount: \$87,288.51		Austin
\$426,620.38		

Issue: Whether plaintiff should be given credit against tax due for examination fees paid to the state in connection with a market conduct examination report ordered by the Texas Department of Insurance. Plaintiff also asks for penalty and interest waiver.

Status: Answer filed.

Warranty Underwriters Insurance Co. v. Rylander, et al. Cause #99-12271
AG Case #99-1226739

Insurance Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 10/20/99	Plaintiff's Counsel:	Nanette K. Beaird
Period: 1993-1997		Raymond E. White
1993-1997		Daniel Micciche
Amount: \$416,462.73		Akin, Gump, Strauss, Hauer
\$214,893.74		& Feld
		Austin

Issue: Whether the Comptroller improperly included amounts not received by Plaintiff in Plaintiff's gross premiums tax base. Whether any maintenance tax is payable on Plaintiff's business of home warranty insurance. Whether the Comptroller is bound by the prior actions and determinations of the Texas Department of Insurance. Whether the assessments of tax violate due process and equal taxation. Whether penalty and interest should have been waived.

Status: Informal discovery in progress. Case will go to mediation.

Controlled Substances Tax

Sanchez, Joseph I. & Zyle Glass & Anthony Montoya v. Rylander, et al. Cause

#GN000444

AG Case #001271006

Controlled Substances Tax;

Declaratory Judgment

Filed: 02/15/00

Period: 1992

1992

1993

Amount: \$35,843.28

\$47,670

\$42,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Tom Moran

Schneider & McKinney

Houston

Issue: Whether tax liens and tax assessments should be declared void as a violation of double jeopardy.

Status: Summary Judgment hearing set for 04/02/01.

Other Taxes

Buffalo ISD v. Comptroller Cause #GV001433

AG Case #001376227

Property Tax; Administrative
Appeal & Injunction
Filed: 06/23/00
Period: 1999
Amount: \$

Asst. AAG Assigned:

Nicole Galwardi

Plaintiff's Counsel:

Roy L. Armstrong
Robert L. Meyers
McCreary, Veselka, Bragg
& Allen
Austin

Issue: Whether the Comptroller erred by not properly selecting and inspecting sample properties.

Status: Answer filed.

Burleson ISD v. Comptroller Cause #GN002130

AG Case #001339878

Property Tax; Administrative
Appeal
Filed: 07/27/00
Period:
Amount: \$

Asst. AAG Assigned:

Nicole Galwardi

Plaintiff's Counsel:

Robert Mott
Joseph Longoria
Perdue, Brandon, Fielder,
Collins & Mott
Houston

Issue: Whether the Comptroller acted arbitrarily and did not satisfy the burden of proof in the administrative process.

Status: Answer filed.

Caldwell, Marcie v. Rylander Cause #99-13088

AG Case #99-1234329

Declaratory Judgment Tax;
Declaratory Judgment
Filed: 11/08/99
Period: 1992-Present
Amount: \$

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Joe K. Crews
Diane S. Jacobs
Ivy, Crews & Elliott
Austin

Issue: Whether county court fees collected from persons who are convicted of any criminal offense are constitutional. Plaintiff seeks class action declaratory and injunctive relief to prevent Comptroller from collecting fees. Plaintiff also seeks attorneys' fees.

Status: Plea to Jurisdiction denied 01/06/00. Preparing Interlocutory Appeal. Oral argument set 04/26/00. Trial court decision holding jurisdiction affirmed. Plaintiff waived all rights to refund of court costs. Summary Judgment filed. County Association Amicus brief filed.

Castleberry ISD; Ennis ISD; Canyon ISD; La Porte ISD v. Comptroller Cause #96-08010

AG Case #96-599817

Property Tax; Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 07/11/96	Plaintiff's Counsel:	Robert Mott
Period: 1994		Joseph Longoria
Amount: \$		Perdue, Brandon, Fielder, Collins & Mott
		Houston

Issue: Various issues concerning the validity of the Comptroller's property value study.

Status: Answer and Special Exception filed. Inactive. Settlement reached with Canyon ISD. Only La Porte ISD is now pending. LaPorte ISD has made a settlement offer. Discovery in progress.

Centerville ISD v. Comptroller Cause #GV001431

AG Case #001376243

Property Tax; Administrative Appeal & Injunction	Asst. AAG Assigned:	Nicole Galwardi
Filed: 06/23/00	Plaintiff's Counsel:	Roy L. Armstrong
Period: 1999		Robert L. Meyers
Amount: \$		McCreary, Veselka, Bragg & Allen
		Austin/Waco

Issue: Whether the Comptroller erred by not properly selecting and inspecting sample properties.

Status: Answer filed.

Chevron USA, Inc. v. Sharp, et al. Cause #96-06931
AG Case #96-538704

Natural Gas Production Tax; Refund	Asst. AAG Assigned:	Steve Rodriguez
Filed: 06/13/96	Plaintiff's Counsel:	Mark W. Eidman
Period: 08/18/90		Ray Langenberg
Amount: \$157,463		Scott, Douglass & McConnico Austin

Issue: Whether tax should have been assessed on Order 94 payments.

Status: Discussions in progress.

Chrysler Financial Co., L.L.C. v. Rylander, et al. Cause #99-13243
AG Case #99-1238189

Motor Vehicle Tax; Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 11/12/99		
Period: 10/01/90-11/30/96	Plaintiff's Counsel:	Mark W. Eidman
Amount: \$3,405,494.49		Scott, Douglass & McConnico Austin
		David E .Otero Akerman, Senterfitt & Eidson Florida

Issue: Whether Plaintiff, as assignee of installment contracts with Chrysler dealers, is entitled to a refund under the bad debt credit provision in the sales tax for taxes on motor vehicles that were not paid by defaulting vehicle purchasers. Whether there is any rational basis to distinguish between vehicle sales and other sales or between vehicle rental receipts and vehicle sales receipts for purposes of bad debt relief.

Status: Answer filed.

Cockrill, Charles T. v. Comptroller of Public Accounts, et al. Cause #CJ-00-308
AG Case #001368513

Property Tax; Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 10/12/00	Plaintiff's Counsel:	Douglas L. Jackson
Period:		Vance T. Nye
Amount: \$99,425.50		Gungoll, Jackson, Collins, Box & Devoll Enid, Oklahoma

Issue: Whether the Comptroller asserts any interest in art works that were sold by a taxpayer subject to a tax lien.

Status: Comptroller disclaims interest.

Deweyville ISD v. Rylander Cause #GV001637
AG Case #001335355

Property Tax; Declaratory Judgment	Asst. AAG Assigned:	Nicole Galwardi
Filed: 07/14/00	Plaintiff's Counsel:	John H. Wofford
Period: 1999		Law Office of John H. Wofford
Amount: \$		Austin

Issue: Whether the Comptroller erred by not properly selecting and inspecting sample properties. Whether the Comptroller failed to acknowledge local economic conditions, to timely provide a "clerical errors" report, and to accept additional information.

Status: Answer filed.

El Paso Natural Gas Co. v. Sharp Cause #91-6309
AG Case #91-78237

Gas Production Tax; Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/06/91	Plaintiff's Counsel:	Alfred H. Ebert, Jr.
Period: 01/01/87 - 12/31/87		Andrews & Kurth
Amount: \$10,337,786		Houston

Issue: Whether Comptroller should have granted Plaintiff a hearing on penalty waiver and related issues.

Status: State's Plea in Abatement granted pending outcome of administrative hearing on audit liability.
Negotiations pending.

Fort Davis ISD v. Comptroller Cause #GV001764

AG Case #001339852

Property Tax; Declaratory
Judgment

Filed: 07/28/00

Period: 1999

Amount: \$

Asst. AAG Assigned:

Plaintiff's Counsel:

Nicole Galwardi

James R. Evans, Jr.
Linebarger Heard Goggan
Blair Graham Pena &
Sampson
Austin

Issue: Whether the Comptroller erred by not properly selecting and inspecting sample properties.
Whether the Comptroller failed to acknowledge local economic conditions, to timely provide a "clerical errors" report, and to accept additional information.

Status: Answer filed.

Hernandez, Juan Luis v. Rylander, et al. Cause #C-294-00-G

AG Case #001365550

Declaratory Judgment Tax;
Declaratory Judgment

Filed: 10/03/00

Period: 12/22/92

Amount: \$24,451.35

\$33,252.57

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Kelly K. McKinnis
McAllen

Issue: Whether drug tax liens were mistakenly filed on Plaintiff.

Status: Answer filed.

MFC Finance Co. of Texas v. Rylander, et al. Cause #GN002653

AG Case #001352632

Motor Vehicle Sales Tax;
Refund

Asst. AAG Assigned:

Jim Cloudt

Filed: 09/07/00

Plaintiff's Counsel:

Mark W. Eidman

Period: 01/01/96-12/31/98

Ray Langenberg

Amount: \$5,533,079.80

Scott, Douglass &

McConnico

Austin

Issue: Whether Plaintiff is entitled to tax credit and refund as provided under the sales tax bad debt statute for motor vehicle taxes on installment sales where the purchaser defaulted. Whether the refusal to allow a refund violates equal taxation because there is no rational basis to treat installment sellers of vehicles differently than vehicle renters and other retailers.

Status: Answer filed.

MFN Financial Corp. v. Rylander, et al. Cause #GN002650

AG Case #001352129

Motor Vehicle Sales Tax;
Refund

Asst. AAG Assigned:

Jim Cloudt

Filed: 09/07/00

Plaintiff's Counsel:

Mark W. Eidman

Period: 01/01/96-12/31/98

Ray Langenberg

Amount: \$5,533,079.80

Scott, Douglass &

McConnico

Issue: Whether Plaintiff is entitled to tax credit and refund as provided under the sales tax bad debt statute for motor vehicle taxes on installment sales where the purchaser defaulted. Whether the refusal to allow a refund violates equal taxation because there is no rational basis to treat installment sellers of vehicles differently than vehicle renters and other retailers.

Status: Answer filed.

Marathon Oil Co. v. Rylander, et al. Cause #GN000328
AG Case #001261395

Gas/Oil Production Tax Tax; Refund & Declaratory Judgment Filed: 01/10/00 Period: 1994-1997 Amount: \$1,363,482.60	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Hak K. Dickenson Marathon Oil Co. Houston
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Issue: Whether the market value of oil for the production tax must be reduced by Plaintiff's marketing and processing costs. Whether taxing oil and gas production differently violates equal protection and uniform taxation. Whether the Comptroller's policy on allowable deductions is arbitrary and denies due process. Whether the Comptroller's policy is invalid because it was not adopted as a rule.

Status: Discovery in progress.

McCarty-Hull Cigar Co. v. Sharp, et al. Cause #98-14217
AG Case #99-1093196

Protest Tax; Refund Filed: 12/22/98 Period: 09/01/93-06/30/96 Amount: \$33,582.58	Asst. AAG Assigned: Plaintiff's Counsel:	Scott Simmons Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Whether tax base for cigar and tobacco tax was properly calculated for inventory bought for reduced prices or on a "two-for-one" basis.

Status: Settlement pending.

McCarty-Hull Cigar Co. v. Rylander, et al. Cause #99-01996
AG Case #99-1125014

Protest Tax; Refund Filed: 02/19/99 Period: 09/01/93-06/30/96 Amount: \$40,404.49	Asst. AAG Assigned: Plaintiff's Counsel:	Scott Simmons Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Whether promotional allowances or two-for-one sales were “ongoing” or “uniform price” transactions rather than trade discount, special discount or deal for purposes of determining the manufacturer’s list price.

Status: Settlement pending.

New Crew Quarters 2, Inc. v. Rylander, et al. Cause #GN002606

AG Case #001352111

Mixed Beverage Gross Receipts Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 09/01/00	Plaintiff's Counsel:	Mark W. Eidman
Period: 09/01/93-02/28/97		Ray Langenberg
Amount: \$216,325.07		Curtis J. Osterloh
		Scott, Douglass & McConnico

Issue: Whether audit incorrectly assessed mixed beverage tax by failing to consider changes in inventory and periods of business closures. Whether 50% fraud penalty was incorrectly assessed where some of the Plaintiff’s books and records were destroyed by fire. Plaintiff also seeks attorneys’ fees.

Status: Discovery in progress.

Oakwood ISD v. Comptroller Cause #GV001432

AG Case #001376201

Property Tax; Administrative Appeal & Injunction	Asst. AAG Assigned:	Nicole Galwardi
Filed: 06/23/00	Plaintiff's Counsel:	Roy L. Armstrong
Period: 1999		Robert L. Meyers
Amount: \$		McCreary, Veselka, Bragg & Allen

Issue: Whether the Comptroller erred by not properly selecting and inspecting sample properties.

Status: Answer filed.

P.W. Jones Oil Co., Inc. v. Sharp, et al. Cause #96-02941
AG Case #96-485280

Diesel Fuel Tax; Injunction Filed: 03/12/96 Period: 1989-1993 Amount: \$176,959	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez John A. Leonard Russell & Leonard Wichita Falls
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Issue: Whether Plaintiff can rebut the presumption that the sale of diesel fuel is taxable. Plaintiff also asks for an injunction to stop collection action.

Status: Inactive.

Preston Motors by George L. Preston, Owner v. Sharp, et al. Cause #91-11987
AG Case #91-133170

Motor Vehicle Tax; Protest Filed: 08/26/91 Period: 12/01/86 - 09/30/89 Amount: \$21,796	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt George L. Preston Paris
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Issue: Whether motor vehicle tax should fall on dealer/seller rather than the purchaser under §152.044. Related constitutional issues.

Status: Inactive.

Travis Co., et al. v. Lot 1, Baker Dale Addn. Cause #X99-01147
AG Case #99-1195629

Property Tax; Ad Valorem Filed: 08/04/99 Period: 1994-1998 Amount: \$112,123.6	Asst. AAG Assigned: Plaintiff's Counsel:	James Parsons Carol V.M. Garcia Assistant Travis County Attorney Austin
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Issue: Whether properties in which the University of Texas System owns an interest may be foreclosed for payment of property taxes.

Status: Discovery in progress. Settlement negotiations in progress.

Valentine ISD v. Comptroller Cause #GV001763
AG Case #001339860

Property Tax; Administrative
Appeal

Filed: 07/28/00

Period: 1999

Amount: \$

Asst. AAG Assigned:

Plaintiff's Counsel:

Nicole Galwardi

James R. Evans, Jr.
Linebarger Heard Goggan
Blair Graham Pena &
Sampson
Austin

Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties. Whether the Comptroller failed to consider local modifiers, sales, and market information.

Status: Answer filed.

Closed Cases

3 Beall Brothers 3, Inc. v. Sharp, et al. Cause #97-05710

AG Case #97-736089

Franchise Tax; Refund

Filed: 05/12/97

Period: 1993

Amount: \$732,559

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Issue: Plaintiff challenges franchise "additional" tax imposed after Plaintiff merged out of existence, on the grounds that the tax discriminates without a rational basis between fiscal and calendar-year taxpayers, under state and federal equal taxation provisions, and violates the federal commerce clause nexus and fair relation tests.

Status: Judgment for Plaintiff on 06/25/98. Judgment reversed and rendered by the Third Court of Appeals. Texas Supreme Court denied Plaintiff's petition for review on 03/23/00. Motion for rehearing due 04/07/00. *See Rylander v. 3 Beall Brothers 3, Inc.*, 2 S.W.3d 562 (Tex. App.-Austin 1999, *pet. den.*)

Adams Resources & Energy, Inc., Service Transport Co. and ADA Crude Oil Co. v. Comptroller Cause #98-08575

AG Case #98-1008774

Franchise Tax; Refund

Filed: 08/05/98

Period: 1993-1996

Amount: \$77,428

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

Philip P. Sudan, Jr.
Mark F. Elvig
Ryan & Sudan
Houston

Issue: Whether Plaintiff's officer and director compensation should be added to taxable surplus for franchise tax purposes.

Status: Dismissed 12/28/00.

American & Foreign Insurance Co., Royal Indemnity Co., Royal Insurance Co. of America and Safeguard Insurance Co. v. TDI; Jose Montemayor, Cmsr.; Cornyn; Rylander; CPA; and Texas Public Finance Authority Cause #99-06208
AG Case #99-1172917

Maintenance Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 05/27/99	Plaintiff's Counsel:	Stephen L. Phillips
Period: 1998		Julie K. Lane
1998		Roan & Autrey
1998		Austin
Amount: \$2,036.27		
\$17,389.16		
\$43,339.45		
\$32.41		

Issue: Whether the workers' compensation maintenance tax surcharge should be calculated on premiums actually written or premiums including deductible amounts.

Status: Non-suited.

AT&T Corp. and AT&T Communications of the Southwest, Inc. v. Sharp, et al.
Cause #97-02005
AG Case #97-682939

Misc. Gross Receipts & PUC Gross Receipts Tax; Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 02/19/97	Plaintiff's Counsel:	Jasper G. Taylor, III
Period: 10/01/79-06/30/88		Fulbright & Jaworski
Amount: \$34,401,333 (gross receipts)		Houston
\$7,990,267 (PUC assessments)		

Issue: Whether taxpayers similarly situated to AT&T were not required to pay gross receipts tax and PUC assessments, as AT&T was, resulting in discrimination against Plaintiff under the equal and uniform taxation clause of the Texas Constitution and the equal protection clause of the U.S. Constitution.

Status: Hearing on State's objections to discovery held 06/25/97. Objections upheld. Trial held 01/05/98. Court ruled for State 01/09/98. Plaintiff filed notice of appeal. Plaintiff's brief was due 10/26/98. Appellee's brief filed 11/24/98; Appellant's reply was due 01/14/99. Oral argument held 03/4/99. Judgment for State affirmed 08/26/99. Petition for review filed. Response filed. Petitioner's brief filed 02/25/00. Respondents' brief filed 03/16/00. Petitioner's reply filed 03/31/00. Petition denied 09/14/00. Motion for rehearing filed. Response to motion for rehearing filed 11/21/00. Motion for rehearing denied 12/07/00.

Brown, William A. d/b/a Nortex Investigative Services v. Sharp, et al. Cause #96-06158
AG Case #96-529466

Sales Tax; Declaratory Judgment & Injunction Filed: 05/29/96 Period: 01/01/90-12/31/93 Amount: \$30,992	Asst. AAG Assigned: Plaintiff's Counsel:	James Parsons Gary L. Waite Attorney at Law Paris
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Issue: Whether Plaintiff is liable for sales tax on its security services. Whether Plaintiff relied to its detriment on erroneous advice from the Comptroller.

Status: Answer and plea to the jurisdiction filed. Discovery in progress. Motion for Summary Judgment heard and granted 02/25/00; signed 02/28/00.

Capital Guidance Associates IV v. Sharp, et al. Cause #97-06501
AG Case #97-752471

Sales Tax; Protest Filed: 06/03/97 Period: 07/01/90-03/31/94 Amount: \$39,882	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Claim for refund under prior contract exemption and Rule 3.319, as it was in effect until 1992. Whether the Comptroller could pass a rule contrary to Rule 3.319 and apply it retroactively. Issue involves exemption for two-party vs. three-party contracts and a policy change.

Status: Dismissed.

Celadon Trucking Services, Inc. v. Sharp, et al. Cause #97-00827

AG Case #97-662443

Interstate Motor Carrier
Sales Tax; Protest
Filed: 01/22/97
Period: 02/88-02/92
Amount: \$1,151,784

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Issue: Whether the residual value of leased vehicles should be deducted from the lease price that is taxed, when the vehicles are sold back to the lessors at the end of the lease. Whether the tax is fairly apportioned given the amount of business Plaintiff conducts in Mexico.

Status: Settled.

Chevron Chemical Co. v. Rylander, et al. Cause #99-06650

AG Case #99-1178021

Sales Tax; Refund
Filed: 06/09/99
Period: 12/31/88-06/30/92
Amount: \$624,887.13

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

Mark W. Eidman
Ray Langenberg
Curtis J. Osterloh
Scott, Douglass &
McConnico
Austin

Issue: Whether installation of Plaintiff's extruder was non-taxable new construction. Whether any taxable modification of real property was less than 5% of the total charge. Alternatively, whether demolition and construction management services were non-taxable unrelated services. Whether security services were non-taxable property management services. Whether services performed by Brown & Root and Industrial Technicians qualified as non-taxable employee services.

Status: Settled.

Chevron USA, Inc. v. Sharp, et al. Cause #97-05867
AG Case #97-739594

Motor Fuels Tax; Refund
Filed: 05/15/97
Period: 04/01/90-03/31/94
Amount: \$316,460

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Issue: Plaintiff is a petroleum refiner and a diesel fuel bonded supplier. The Comptroller denied refund claims because they were barred by the one-year statute of limitations in §153.224. Plaintiff contends that the statute of limitations in §111.104 (c) is applicable; that an agreement to extend the statute of limitations applied to Plaintiff's refund request; that the one-year statute does not apply because the refund claim is not made pursuant to Chapter 153 (Motor Fuels Tax); that the Comptroller's guidelines apply the four-year statute in circumstances similar to Plaintiff's; and that, in the alternative, the one-year statute is unconstitutional. There is also a detrimental reliance claim.

Status: Agreed Judgment.

Cinco Hermanos, Inc. v. Sharp, et al. Cause #97-13533
AG Case #97-864270

Sales Tax; Protest
Filed: 12/04/97
Period:
Amount: \$70,153

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Timothy M. Trickey
The Trickey Law Firm
Austin

Issue: Whether export certificates accepted by a seller that are dated before or more than 30 days after the purchase in question are invalid on their face or merely raise a presumption of non-export.

Status: Judgment.

Computer Systems of America, Inc. v. Sharp, et al. Cause #96-15311

AG Case #97-651758

Sales Tax; Protest

Filed: 12/23/96

Period: 12/01/87-10/31/92

Amount: \$51,956

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

Mark Hopkins
Attorney at Law
Austin, Texas

Issue: Whether penalty and interest should have been waived by the Comptroller on the audit liability.

Status: Settled.

Consigned Sales Distributors, Inc. v. Sharp, et al. Cause #95-06984

AG Case #95-300392

Franchise Tax; Refund

Filed: 06/05/95

Period: 1989-1992

Amount: \$723

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Fred O. Marcus
Horwood, Marcus & Braun
Chicago, Illinois

David E. Cowling
Jones, Day, Reavis & Pogue
Dallas

Issue: Whether the Texas franchise tax is a tax imposed on or measured by net income for purposes of Public Law 86-272; if so, Plaintiff contends that it is not subject to the Texas franchise tax. Whether Plaintiff is doing business in Texas. Whether post-retirement benefits should be included in taxable surplus.

Status: Dismissed for want of prosecution on 03/13/00.

Dallas SMSA Partnership v. Sharp, et al. Cause #97-09713

AG Case #97-801766

Sales Tax; Refund

Filed: 08/22/97

Period: 01/89-08/31/92

Amount: \$99,349

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Issue: Whether engineering services were part of the sales price of tangible personal property sold to Plaintiff.

Status: Summary Judgment for Plaintiff signed 01/20/99. Appellate briefs filed. Oral argument held 10/27/99. Court of Appeals rendered decision for taxpayers 01/06/00. New final decision rendered 02/03/00.

Davis, Mary v. Sharp, et al. Cause #97-09703

AG Case #97-801230

Motor Vehicle Tax; Refund

Filed: 08/22/97

Period: 1994

Amount: \$1,300

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

David H. Gilliland
Clark, Thomas & Winters
Austin

Issue: Whether Plaintiff is entitled to an exemption from motor vehicle tax under §152.086, which includes an exemption for motor vehicles modified by or for the transportation of an orthopedically handicapped person.

Status: Nonsuited.

Etan Industries, Inc. v. Sharp, et al. Cause #98-13227

AG Case #98-1083579

Sales Tax; Protest

Filed: 11/25/98

Period: 09/01/92-01/31/96

Amount: \$456,156.99

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

Mark W. Eidman
Ray Langenberg
Curtis J. Osterloh
Scott, Douglass &
McConnico
Austin

Issue: Whether debt collection services purchased by Etan in connection with its debt collection services for its clients are exempt as a sale for resale of taxable services.

Status: Case settled.

Fleming Foods of Texas, Inc. v. Sharp, et al. Cause #94-14234

Appellate Cause No. 03-96-00477-CV

AG Case #94-180096

Sales Tax; Protest

Filed: 11/14/94

Period: 07/01/85-06/30/89

Amount: \$353,874

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

J. Scott Morris

Attorney at Law

Austin

Issue: Whether both the taxpayer and its vendor must timely waive the statute of limitations in order to have it kept open for the taxpayer to claim a refund of, or credit for, sales tax paid to the vendor. Also, Plaintiff contends the Comptroller did not initially enforce a new rule concerning tax on janitorial services and that tax voluntarily paid by the taxpayer should be refunded.

Status: Judgment for State signed 05/03/96. Appealed and argued before Court of Appeals. Affirmed 08/28/97. Taxpayer's Motion for Rehearing overruled. Writ (Petition for Review) denied 02/26/98. Motion for rehearing of denial of writ (petition) filed 03/13/98. Granted 09/98. Set for submission 11/18/98. Judgment for Plaintiff. Motion for Rehearing filed. Supreme Court rendered new decision for taxpayers.

Gant, Jesse A., Estate of v. Comptroller, et al. Cause #96-07733

AG Case #96-555579

Inheritance Tax; Declaratory

Judgment

Filed: 07/03/96

Period: 07/24/92

Amount: \$

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

Peter K. Munson

Munson, Munson, Pierce &

Cardwell

Sherman

Issue: Whether penalty should be waived.

Status: Dismissed 11/04/99.

Haber Fabrics Corp. v. Sharp, et al. Cause #96-11802
AG Case #96-611624

Sales Tax; Protest
Filed: 09/30/96

Period: 01/01/90-11/30/93
Amount: \$84,984

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Robert M. Nicoud, Jr.
Robert E. Birne
Olson Gibbons Sartain
Nicoud Birne Sussman &
Gueck
Dallas

Issue: Whether wrapping and packaging and purchases of natural gas and electricity were exempt as being used in manufacturing.

Status: Bench Trial heard 01/20/99. Court granted exemptions for packaging, wrapping and electricity, but not natural gas. Defendants' Motion for New Trial is pending. Findings of Fact and Conclusions of Law filed by the Court 03/15/99. Defendant filed Notice of Appeal 05/10/99. Appellant's brief filed 07/08/99. Appellee's brief filed 08/08/99. Reply filed 08/26/99. Oral argument held 12/01/99. Decision for taxpayer affirmed.

Hoffer Furniture Rental, Inc. v. Sharp Cause #95-15906
AG Case #96-438019

Sales Tax; Declaratory
Judgment

Filed: 12/29/95
Period: 01/01/89-10/31/92
Amount: \$110,665

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

L. Don Knight
Meyer, Knight & Williams
Houston

Issue: Whether Plaintiff's sales of insurance contracts (to cover damage to furniture it sells or leases) are taxable.

Status: Dismissed for want of prosecution 12/19/00.

Houston Industries, Inc. v. Sharp, et al. Cause #98-11344
AG Case #98-1063316

Franchise Tax; Refund Filed: 10/08/98 Period: 01/01/93-10/08/93 Amount: \$1,676,116	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Gerard A. Desrochers Baker Botts Houston
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Issue: Plaintiff challenges franchise "additional" tax imposed on a company that merged into Plaintiff and ceased to exist, on the grounds that the tax discriminates under state and federal equal taxation provisions.

Status: Motion for summary judgment set for hearing on 11/16/00. Plaintiff non-suited. See *Rylander v. 3 Beall Brothers 3, Inc.*, 2 S.W.3d 562 (Tex. App. - Austin 1999, pet. den.)

Houston Industries Building, Inc. v. Rylander, et al. Cause #99-04219
AG Case #99-1152984

Sales Tax; Refund Filed: 04/09/99 Period: 10/01/93-03/31/96 Amount: \$960,867.93	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez L.G. Skip Smith David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether removal of asbestos is an exempt service.

Status: Settled in accordance with *Associated Technics*.

Irv-Tex Coin Laundries, Inc. v. Sharp, et al. Cause #93-01350
AG Case #93-222579

Sales Tax; Protest Filed: 02/04/93 Period: 01/88-10/91 Amount: \$25,931	Asst. AAG Assigned: Plaintiff's Counsel:	Nicole Galwardi Jimmy L. Heisz & W. Wade Porter Haynes & Boone Dallas and Austin
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Issue: Taxability of buffer pads, wax, polish, etc. when sold to body shops and new car dealers by way of a separated contract.

Status: Dismissed.

Kandi Sue, Inc. v. Sharp, et al. Cause #94-14073

AG Case #94-176797

Sales Tax; Protest

Filed: 11/8/94

Period: 10/01/91-12/31/91

Amount: \$7,757

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Mark Blakemore
Royston, Razor, Vickery &
Williams
Brownsville

Issue: Whether the purchase of a shrimp trawler was exempt from tax as an occasional sale (identifiable segment of the business).

Status: Non-suited.

Kerrville ISD v. Comptroller Cause #98-08168

AG Case #98-1014962

Property Tax; Substantial
Evidence Review

Filed: 07/28/98

Period: 1997

Amount: \$

Asst. AAG Assigned:

Plaintiff's Counsel:

Gene Storie

Roy L. Armstrong
Shelburne J. Veselka
McCreary, Veselka, Bragg
& Allen
Austin

Issue: Whether the Comptroller's property value study was incorrect in that the Comptroller failed to use samples of properties selected through generally accepted sampling techniques and failed to perform the value study according to generally accepted standard valuation, statistical compilation and analysis techniques.

Status: Settlement reached. Final Judgment signed.

Kraft Foods, Inc. v. Rylander, et al. Cause #99-05522

AG Case #99-1166778

Franchise Tax; Protest &
Declaratory Judgment

Filed: 05/12/99

Period: 1994

Amount: \$1,257,944.51

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Gilbert J. Bernal, Jr.

James F. Martens

Stahl, Martens & Bernal
Austin

Issue: Whether imposition of the additional tax after Plaintiff's merger violates the commerce clause, due process, equal protection or equal taxation. Whether Plaintiff may recover attorneys' fees.

Status: Non-suited.

Lake Charles Yamaha, Inc. v. Sharp Cause #97-05737

AG Case #97-736070

Sales Tax; Declaratory
Judgment

Filed: 05/13/97

Period: 04/01/91-03/31/95

Amount: \$150,214

Asst. AAG Assigned:

Plaintiff's Counsel:

Gene Storie

Russell J. Stutes, Jr.

Scofield, Gerard, Veron,
Singletary & Pohorelsky
Lake Charles, Louisiana

Issue: Plaintiff asserts that it has no nexus with Texas and cannot be assessed sales tax, although it concedes that it delivers merchandise into Texas in its own trucks.

Status: Plaintiff's discovery responses overdue. On dismissal docket. Dismissed 07/25/00.

Lake Worth ISD, et al. v. Texas Comptroller of Public Accounts Cause #97-08882

AG Case #97-793052

Property Tax; Substantial
Evidence Review

Filed: 08/05/97

Period: 1996

Amount: \$

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Russell R. Graham

Calame, Linebarger, Graham
& Pena
Austin

Issue: Whether the Comptroller's property value study is incorrect in that it misstates the market value of the subject property and causes the estimate of market value for Category F to exceed the actual market value of the School District's 1996 tax base, depriving it of state aid to which it is legally entitled.

Status: Non-suited.

Landgraf, Larry A. d/b/a Landgraf & Co., Inc. v. Rylander, et al. Cause #99-00186
AG Case #2-465846049-8

Sales Tax; Injunction	Asst. AAG Assigned:	Blake Hawthorne
Filed: 06/30/99		
Period:	Plaintiff's Counsel:	Larry A. Landgraf, Pro Se
Amount: \$		

Issue: Whether the Comptroller and the State have engaged in grand larceny, conspiracy, invasion of privacy, etc. in collecting sales tax and canceling Plaintiff's sales tax permit.

Status: Defendant's Plea to the Jurisdiction granted 04/03/00. Case dismissed with prejudice.

Laney, James M. v. Sharp, et al. Cause #97-08525
AG Case #97-782484

Sales Tax; Declaratory	Asst. AAG Assigned:	Cecilia Gonzalez
Judgment & Refund		
Filed: 07/25/97	Plaintiff's Counsel:	Howard V. Rose
Period: 10/01/89-07/31/93		Brown McCarroll & Oaks
Amount: \$91,744		Hartline
		Austin

Issue: Whether the Comptroller complied with the law governing sample audits. Whether the agreement extending the statute of limitations was timely signed.

Status: Judgment for Defendants.

LTV Steel Co., Inc. v. Sharp, et al. Cause #97-02822
AG Case #97-690528

Franchise Tax; Refund Filed: 03/07/97 Period: 1988-1991 Amount: \$337,869	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Michael V. Powell Kathleen Galloway Locke Purnell Rain Harrell Dallas
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Issue: Whether a liability payable to the Pension Benefit Guaranty Corp. pursuant to ERISA is a debt for franchise tax purposes. Whether §171.109 (a) of the Tax Code is preempted by ERISA.

Status: Settled.

Lucky Lady Oil Co. v. Rylander, et al. Cause #99-01731
AG Case #99-1124769

Sales Tax; Protest Filed: 02/12/99 Period: 06/01/88-12/31/91 Amount: \$402,951.08	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Timothy M. Trickey The Trickey Law Firm Austin
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Issue: Whether taxpayer's liability for diesel fuels tax was properly computed. Whether the Comptroller should waive penalty and interest.

Status: Settled.

Martinez, Jesus Manuel v. Sharp, et al. Cause #95-06432
AG Case #95-292622

Controlled Substances Tax; Declaratory Judgment Filed: 05/22/95 Period: 09/03/93 Amount: \$723,957	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Carlos Eduardo Cardenas Law Offices of Joseph Abraham, Jr. El Paso
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Issue: Whether the Controlled Substances Tax Act is unconstitutional on various grounds.

Status: Dismissed for want of prosecution.

McLane Co., Inc. v. Rylander, et al. Cause #99-00979
AG Case #99-1110073

Protest Tax; Refund

Filed: 01/27/99

Period: 01/01/90-01/31/96

Amount: \$26,500,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Gilbert J. Bernal, Jr.

James F. Martens

Stahl, Martens & Bernal

Austin

Issue: Whether taxes on tobacco products are based on the list price of products sold by a manufacturer only to its affiliated distributor or on the price paid by a Texas distributor to the affiliated distributor. Whether tax based on the distributor's price violates the commerce clause or equal protection. Whether departmental construction was followed and whether refunds must be made to consumers before distributor may receive refund.

Status: Settled.

Nabisco, Inc. and Planters/Lifesavers v. Sharp, et al. Cause #03-98-00399-CV
AG Case #97-782304

Franchise Tax; Protest &
Refund

Filed: 07/21/97

Period: 1989-1991

Amount: \$2,155,572

\$51,416

\$1,009,239

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Donald L. Stuart

Drenner & Stuart

Austin

Gilbert J. Bernal, Jr.

Stahl, Martens & Bernal

Austin

Issue: Whether Plaintiffs are entitled to a deduction from gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: See *Nabisco v. Rylander*, 992 S.W.2d 678 (Tex. App. - Austin 1999, pet. den.).

Nevada Asset Management Corp. v. Rylander, et al. Cause #99-13471
AG Case #99-1238957

Franchise Tax; Protest Filed: 11/18/99 Period: 1996 - 1998 Amount: \$382,215.81	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Glen A. Rosenbaum James D. Penny Wade Anderson Tobey D. Blanton Nancy L. Prosser Vinson & Elkins Houston & Austin
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Issue: Whether Rule 3.549, applying a 15.78% apportionment factor to receipts from GNMA securities, is invalid under the Commerce Clause. Whether the rule violates equal protection, equal taxation and due process. Whether the Comptroller lacks statutory authority to impose the 15.78% factor. Alternatively, whether calculation of the tax is correct even if the rule validly applies.

Status: Settled.

Oliveira, Leonel v. Rylander, et al. Cause #99-14679
AG Case #99-1249798

Controlled Substances Tax; Declaratory Judgment Filed: 12/20/99 Period: 11/22/94 Amount: \$503,433.87	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Horacio Pena, Jr. Law Office of Horacio Pena, Jr. Mission
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Issue: Whether Plaintiff may remove controlled substances tax lien on grounds of double jeopardy when Plaintiff has previously been convicted for possession of the same controlled substances by a federal district court.

Status: Plaintiff agreed to non-suit.

Ontario Investments, Inc. v. Sharp, et al. Cause #98-10956
AG Case #98-1052095

Sales Tax; Protest Filed: 09/29/98 Period: 08/01/89-04/30/92 Amount: \$24,142	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Samuel E. Long Moseley & Standerfer Dallas
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Issue: Whether sales tax on equipment leases should have been accelerated when the leases were pledged as collateral.

Status: Agreed judgment entered 12/11/00.

Phillips Petroleum Co. v. Sharp, et al. Cause #92-11027
AG Case #92-123660

Franchise Tax; Refund Filed: 07/30/92 Period: 1988 - 1989 Amount: \$1,161,407	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson L.G. Skip Smith Clark, Thomas & Winters Austin
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Issue: Write-down v. write-off of investment in subsidiaries and exclusion of loss from surplus.

Status: Case settled.

Phillips Petroleum Co. v. Sharp, et al. Cause #98-10495
AG Case #98-1047236

Franchise Tax; Refund Filed: 09/17/98 Period: 1991-1992 Amount: \$324,568	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L.G. Skip Smith Clark, Thomas & Winters Austin
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Issue: Write-down v. write-off of investment in subsidiaries and exclusion of loss from surplus.

Status: Agreed judgment.

Popp, Robert K. v. Sharp Cause #95-13808
AG Case #95-407465

Controlled Substances Tax; Filed: 11/03/95 Period: 1992 Amount: \$12,793	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Paul J. Goeke Attorney at Law San Antonio
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Issue: Plaintiff urges that “the evidence was insufficient as a matter of law to support the judgment.” Plaintiff also asserts that the assessment of the drug tax violates the double jeopardy provisions of the Fifth Amendment.

Status: Agreed judgment entered 12/19/00.

Reflectone Training Systems, Inc. v. Bullock, et al. Cause #492,137
AG Case #90-379102

Sales Tax; Protest Filed: 10/11/90 Period: 01/01/87 - 12/31/88 Amount: \$85,419	Asst. AAG Assigned: Plaintiff's Counsel:	Nicole Galwardi Forrest Smith Arter & Hadden Dallas
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Issue: Taxability of lease payments reimbursed by U.S. Navy. Resale certificates and government exemption.

Status: Dismissed.

Rubrecht, Henry Fred v. Bullock, et al. Cause #486,655
AG Case #90-327542

Controlled Substances Tax; Protest Filed: 06/29/90 Period: N/A Amount: \$17,169	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Edwin M. Sigel Dallas
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Issue: Is the Controlled Substances Tax Act unconstitutional.

Status: Plaintiff is deceased. Heirs filed suggestion of death. Judgment entered.

Ryder Truck Rental, Inc. v. Sharp, et al. Cause #96-14241
AG Case #96-637642

Sales Tax; Protest Filed: 11/22/96 Period: 07/01/89-09/30/92 Amount: \$270,217	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Paul O. Price Richard E. Flint The Kleberg Law Firm Corpus Christi
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Issue: Whether electricity purchases are exempt from sales tax because the electricity is used for processing.

Status: Judgment.

Salih, John Douglas v. Sharp, et al. Cause #96-04153
AG Case #96-500833

Controlled Substances Tax; Declaratory Judgment & Injunction Filed: 04/11/96 Period: 09/95 Amount: \$304,110	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Charles O. Grigson Attorney at Law Austin
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Issue: Whether the Controlled Substances Tax Act is unconstitutional on various grounds.

Status: Dismissed for want of prosecution.

San Antonio SMSA Limited Partnership v. Sharp, et al. Cause #97-11831
AG Case #97-834614

Sales Tax; Refund Filed: 10/15/97 Period: 01/01/89-08/31/92 Amount: \$217,898	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether engineering services were part of the sales price of tangible personal property sold to Plaintiff.

Status: See *Dallas SMSA*.

Schlumberger Technology Corp., for and on behalf of Geoquest Systems, Inc. v. Rylander, et al. Cause #99-10444
AG Case #99-1212895

Franchise Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Christine Monzingo
Filed: 09/08/99	Plaintiff's Counsel:	Gerard A. Desrochers
Period: 01/01/93-12/31/93		Baker Botts
Amount: \$345,393		Houston

Issue: Whether the additional tax was owed by a corporation that merged out of existence. Whether imposition of the additional tax on the non-surviving corporation of a merger violated due process, equal protection or the commerce clause. Alternatively, whether the income from the sale of intangibles was properly attributed to Texas. Plaintiff also seeks attorneys' fees.

Status: Plaintiff non-suited.

Sledd, Charles Bruce Cause #00-1180
AG Case #001381748

Sales Tax; Writ of Mandamus	Asst. AAG Assigned:	Gene Storie
Filed: 11/15/00	Plaintiff's Counsel:	Charles Bruce Sledd
Period: 07/04/99 & 02/18/00		Pro Se
Amount: \$11.54		Houston

Issue: Whether tax is payable on extended warranty contracts sold with electrical appliances. Whether taxable sales price must be reduced by a rebate amount. Whether charging tax on those amounts is fraud.

Status: Notice of counsel filed. Court denies mandamus.

Smith, Kelli Deann v. Sharp Cause #95-15061

AG Case #95-424749

Controlled Substances Tax;

Asst. AAG Assigned:

Blake Hawthorne

Declaratory Judgment

Filed: 12/04/95

Plaintiff's Counsel:

Craig A. Stokes

Period: 01/27/93

Oppenheimer, Blend,

Amount: \$17,222

Harrison & Tate

San Antonio

Issue: Plaintiff asserts that Chapter 159 of the Texas Tax Code is unconstitutional because it does not require proof of a tax liability beyond a reasonable doubt.

Status: Dismissed for want of prosecution 12/19/00.

Southwest Oil Co. of San Antonio, Inc. v. Bullock, et al. Cause #470,110

AG Case #89-110867

Diesel Fuel Tax; Protest

Asst. AAG Assigned:

Blake Hawthorne

Filed: 08/10/89

Period: 11/01/83-12/31/85

Plaintiff's Counsel:

Donald H. Grissom

Amount: \$61,750

Law Offices of Donald H.

Grissom

Austin

Issue: Acceptable methods to rebut the presumption that once a taxable sale of diesel fuel is made, all future sales are to be taxable as well.

Status: Inactive.

Southwest Subrogation Services, Inc. v. Sharp, et al. Cause #98-09148

AG Case #98-1017965

Sales Tax; Declaratory

Asst. AAG Assigned:

Blake Hawthorne

Judgment

Filed: 08/17/98

Plaintiff's Counsel:

Gregory E. Perry

Period: 10/01/87-09/30/92

Attorney at Law

Amount: \$483,778

Austin

Issue: Whether Plaintiff's services are taxable as debt collection or related services. Whether fraud penalty should have been assessed. Whether Plaintiff is required to prepay the tax before receiving judicial review of the tax assessment. Whether certain tax statutes are constitutional. Whether interest should be waived.

Status: Plaintiff filed for bankruptcy on 10/01/98. Federal stay is in effect. Sales tax now being paid under confirmed Chapter 11 plan.

Southwestern Explosives, Inc. v. Bullock, et al. Cause #426,164
AG Case #87-4575

Franchise Tax; Protest Filed: 09/04/87 Period: 01/01/81 - 12/31/84 Amount: \$40,324	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Must a dividend be declared to be deductible from surplus. Is Rule 3.405 unconstitutional.

Status: Non-suited.

Southwestern Bell Telephone Co. v. Sharp, et al. Cause #98-06783
AG Case #98-980598

Franchise Tax; Refund Filed: 06/24/98 Period: 1991-1994 Amount: \$1,300,000	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether officer and director compensation should be added back to earned surplus before calculating franchise tax. Whether the franchise tax statute requires that depreciation be calculated based on the IRS Code of 1986 in effect for calendar year 1990. OPEB deductibility.

Status: Settled. Plaintiff's Notice of Non-Suit filed 10/23/00.

Southwestern Gas Pipeline, Inc., Mitchell Energy Corp. and The Woodlands Commercial Properties Co., L.P. v. Rylander, et al. Cause #99-14209
AG Case #99-1242702

Franchise Tax; Refund Filed: 12/06/99 Period: 1993-1998 Amount: \$13,150,923.27	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Jasper G. Taylor, III Fulbright & Jaworski Houston
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Issue: Whether imposition of the additional tax after mergers of the Plaintiff corporations and other corporations violates constitutional guarantees of equal and uniform taxation or equal protection and due process under the Texas and United States Constitutions.

Status: Non-suited.

Southwestern Life Insurance Co. v. Philip Barnes, et al. Cause #91-4800
#00-99-00719-CV
AG Case #91-60078

Gross Premium Tax; Protest Filed: 04-05-91 Period: 1990 Amount: \$231,114	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne L.G. Skip Smith David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether an insurance taxpayer may take a credit for examination and valuation fees paid to Texas in one year against a later year's insurance taxes.

Status: Issue resolved against taxpayer in *Southwestern Life Insurance Co. v. Georgia Flint, et al.* Plaintiff nonsuited.

Southwestern Life Insurance Co. v. Georgia Flint, et al. Cause #92-07547
AG Case #92-89265

Gross Premium Tax; Protest Filed: 05-28-92 Period: 1990 Amount: \$183,719	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne L.G. Skip Smith David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether an insurance taxpayer may take a credit for examination and valuation fees paid to Texas in one year against a later year's insurance taxes.

Status: Third Court of Appeals affirmed summary judgment granted for defendants. Petition for review filed in Supreme Court 08/25/00. Supreme Court denied petition for review 10/25/00.

SRI Receivables, Inc. v. Rylander, et al. Cause #99-09553

AG Case #99-1199886

Franchise Tax; Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 08/17/99		
Period: 02/01/93-11/26/94	Plaintiff's Counsel:	Mark W. Eidman
Amount: \$241,583.22		Ray Langenberg
		Scott, Douglass &
		McConnico
		Austin

Issue: Whether assessment of the additional tax under Tax Code §171.0011 violates the Commerce Clause, equal and uniform taxation, or equal protection under the federal and state constitutions when Plaintiff withdrew from the State on 11/26/94 and was taxed on its earned income from 02/01/93 through 11/26/94.

Status: Plaintiff non-suited.

Steamatic of Austin, Inc., et al. v. Sharp, et al. Cause #97-02651

AG Case #97-690537

Sales Tax; Protest	Asst. AAG Assigned:	Steve Rodriguez
Filed: 03/05/97		
Period: 04/01/91-04/30/94	Plaintiff's Counsel:	Mark W. Eidman
Amount: \$166,148		Ray Langenberg
		Scott, Douglass &
		McConnico
		Austin

Issue: Plaintiff contends that an amendment to §151.350 of the Tax Code did not narrow the existing exemption, but if it did, it was not effective until the Comptroller amended the corresponding Rule, 3.357. Issue is tax on labor to restore property damaged in a disaster area.

Status: Judgment for plaintiff.

Steen, Steven G. v. State of Texas, Secretary of State Cause #48-179724-99
AG Case #99-1206525

Controlled Substances Tax; Declaratory Judgment Filed: 08/12/99 Period: 03/26/92 Amount: \$15,430.34	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne David L. Pritchard Fort Worth
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Issue: Whether the Comptroller's drug tax lien should be declared void or satisfied. Plaintiff also seeks attorney's fees.

Status: Plaintiff filed Motion to Non-Suit. Motion to Non-Suit granted.

Sternberg, Bruce Lee v. Sharp, et al. Cause #92-14924
AG Case #92-166506

Controlled Substances Tax; Protest & Declaratory Judgment Filed: 10-23-92 Period: 05/24/90 Amount: \$5,253	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Charles O. Grigson Austin
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Issue: Constitutionality of Controlled Substances Tax Act.

Status: Dismissed for want of prosecution 12/19/00.

Thurman, Kay G. and Merlene G. Stroud v. Sharp Cause #97-06891
AG Case #97-755995

Inheritance Tax; Injunction Filed: 06/11/97 Period: DOD 11/14/82 Amount: \$279,420.77 plus interest	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Robert W. Swanson Von Kreisler & Swanson Austin
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Issue: Whether beneficiaries of an estate owe the balance of inheritance tax not paid by the estate. Statute of Limitations question.

Status: Dismissed 07/26/00.

Union Carbide Chemicals & Plastics Co., Inc. v. Sharp, et al. Cause #93-05809
AG Case #93-274772

Sales Tax; Protest Filed: 05/18/93 Period: 01/01/85 - 12/31/88 Amount: \$419,382	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne L.G. Skip Smith Clark, Thomas & Winters Austin
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Issue: Whether a contract is exempt as a prior contract.

Status: Non-suited.

Union Pacific Resources Co. v. Sharp, et al. Cause #95-13139
AG Case #95-399928

Natural Gas Production Tax; Refund Filed: 10/16/95 Period: 11/82-12/85 Amount: \$110,962	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Scott, Douglas & McConnico
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Issue: Plaintiff requests that monies in escrow with the Comptroller's Office be applied to an audit liability.

Status: Agreed judgment signed.

United Beverage Co. v. Rylander, et al. Cause #99-02370
AG Case #99-1130162

Franchise Tax; Protest Filed: 03/01/99 Period: 01/01/98-12/31/98 Amount: \$1,077,434	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Glen A. Rosenbaum James D. Penny Tobey D. Blanton Wade Anderson Vinson & Elkins Houston
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Issue: Whether the additional tax under 171.0011 is an unconstitutional violation of the commerce clause, due process, due course of law, equal protection, equal taxation and is an unconstitutional retroactive income tax.

Status: Motion for summary judgment hearing set for 11/16/00. Plaintiff non-suited.

Vallado, Jan Clopton, Independent Executor of Estate of Marion Wallace Clopton, Jr. v. Sharp, et al. Cause #97-04810
AG Case #97-723930

Inheritance Tax; Protest Filed: 04/22/97 Period: DOD 08/30/94 Amount: \$1,937	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Kenneth B. Kramer Attorney at Law Wichita Falls
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Issue: Whether penalty should be waived.

Status: Settled.

Wal-Mart Stores, Inc. v. Sharp, et al. Cause #94-12948
AG Case #94-165718

Sales Tax; Refund Filed: 10/14/94 Period: 08/87-07/90; 01/88-12/91; 01/88-12/92 Amount: \$18,268	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Plaintiff attacks the Comptroller's change in policy with regard to prior contracts. The issue is whether two-party contracts are eligible for the exemption, as opposed to three-party contracts, only.

Status: Dismissal with prejudice.

West Texas Gas, Inc. v. Sharp, et al. Cause #93-01245
AG Case #93-222613

Franchise Tax; Protest Filed: 02/02/93 Period: 1988 - 1990 Amount: \$111,761	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Jasper G. Taylor, III Robert F. Corrigan, Jr. Fulbright & Jaworski Houston
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Issue: Whether the difference between an advance to the sole shareholder and the amount of a promissory note could be deducted from surplus as a reduction in stockholder's equity. In the alternative, was it a write-off of a permanent decline in value of an asset or a write-down.

Status: Judgment.

Whitesboro ISD, et al. v. Texas Comptroller of Public Accounts Cause #97-09046
AG Case #97-793043

Property Tax; Substantial Evidence Review Filed: 08/08/97 Period: 1996 Amount: \$	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo E. Jeannie Navarro Attorney at Law Austin
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Issue: Whether the Comptroller's property value study is incorrect in that it exceeds the market value of the subject property and causes the estimate of market value for various categories to exceed the actual market value of the School Districts' 1996 tax base, depriving it of state aid to which it is legally entitled. Plaintiffs also assert that the burden of proof is on the State to prove that Plaintiffs' valuations are incorrect.

Status: Cross-Motions for Summary Judgment heard on 06/25/98. Final Judgment for Comptroller signed 12/09/99. Not appealed.

Wiking Demolition Corp. v. the State of Texas, the Cities of San Antonio and Houston, Texas, the Transit Authority of San Antonio, Texas, Cornyn, et al.
Cause #GN000266
AG Case #001292465

Sales Tax; Declaratory Judgment Filed: 02/02/00 Period: 1991 Amount: \$64,395.69	Asst. AAG Assigned: Plaintiff's Counsel:	Scott Simmons Timothy M. Trickey The Trickey Law Firm Austin
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Issue: Whether summary collection procedures may be used after judgment for sales tax liability has been taken in a collection suit. Whether the exercise of summary collection procedures after a judgment has been taken violates constitutional separation of powers.

Status: Case dismissed.

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